SUPREME COURT OF THE UNITED STATES.

No. 164.2.

THE STEAMER GREY JACKET AND CARGO, TIMOTHY MEAHER, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Libel and order	1	1
Adm'y warrant	3	2
Marshal's return	4	2
Report of prize com	5	2
Testimony of prize master	8	4
Letter from Commodore Bell	9	4
Orders to take charge	10	4
Testimony of T. Meaher	12	5
P. M. Flynn	21	7
C. Newberry	32	9
Letters from captors	42	11
2 bills	44	12
Claim and answer	44	12
Bond for costs	53	14
Order to open papers	54	15
Order, cause fixed	54	15
Notices of trial	54	15
Hearing, ruling, and submission	56	16
Doc'ts A, B, C, D, E, F, G, H, I, and K, offered by libellant	57	16
Doc't L, amnesty oath offered by claimant	68	19
Motion for rehearing	68	19
Hearing and submission	69	20
Order overruling motion	70	20
Harbor master's bill	70	20
Judgment	71	20
Rule to rescind judgment	72	20
Order judgment rescinded	74	21
Order cause fixed	74	21

	Original.	Print.
Hearing and submission	75	21
Affidavit of claimant	76	22
Judgment	85	24
Marshal's costs taxed	86	24
Petition of appeal	87	24
Order of appeal	89	25
Memo. of vend. exponas	89	25
Citation of appeal	90	25
Marshal's return	91	25
Citation of appeal	92	26
Marshal's return	93	26
Appeal bond	94	26
Clerk's certificate	95	27

1 United States district court, eastern district of Louisiana.

THE UNITED STATES OF AMERICA
against
THE STEAMER GREY JACKET, HER TACKLE, &C., AND CARGO. } In prize. No. 7,820.

To the Honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The libel of information in prize filed herein by Rufus Waples, attorney of the United States for the eastern district of Louisiana, on behalf of said libellants and of the naval captors in interest, respectfully represents to this honorable court:

First. That the steamer or vessel called the Grey Jacket, with the goods., wares, and merchandise laden therein, was captured as lawful prize on or about the 31st day of Dec'r, 1863, and brought to Pass a l'Outre, within the jurisdiction of this court, by the United States gunboat Kennebec, W. P. McCann, United States navy, commanding.

Second. That the steamer or vessel called the Grey Jacket, with the goods, wares, and merchandise laden therein, were at the time of such capture, and are now rightfully subject to such capture, and were and are lawful prize, and as such should be condemned and forfeited to the use of the libellants.

Third. That the said steamer or vessel called the Grey Jacket, with the goods, wares, and merchandise laden therein, have been brought to the port of New Orleans, and are now at said port, and within the jurisdiction of this honorable court.

Fourth. That by reason of the premises, the said steamer or vessel called the Grey Jacket, her tackle, apparel, and furniture, with the goods, wares, and merchandise laden therein, became and are liable to condemnation and forfeiture as lawful prize, and should be condemned and forfeited as lawful prize to the libellants.

That all and singular the premises are and were true, and within the jurisdiction of this honorable court; in attestation whereof, the said attorney exhibits the said vessel's papers, and the documents, &c., found on board, together with the testimony of the witnesses, duly taken in preparatorio by the prize commissioners appointed by this honorable court, which are or will be duly filed in the registry of this court.

Wherefore, the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said steamer or vessel called the Grey Jacket, and her tackle, apparel, and furniture, and the goods, wares, and merchandise laden therein, in this behalf to be made, and that all persons interested in the said vessel and her cargo may be cited to answer in the premises; and that all due proceedings being had therein, this honorable court may be pleased to decree for the condemnation and forfeiture aforesaid, and that the said steamer, her tackle, apparel, and furniture, with the goods, wares and merchandise laden therein, may be condemned as lawful prize to the use of the said United States.

Dated New Orleans, Feb'ry 26th, 1864.

RUFUS WAPLES,
United States District Attorney.

2 Let admiralty process issue as prayed for.
Feb'y 27, 1864.
(Sig.) K. LOEW, *D'y Clk.*

3 The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the steamer Grey Jacket, her tackle and cargo, now libelled by the United States of America, for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners and all and every other person or persons having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said steamer and cargo should not be condemned as prize forfeited to the U. S., sold, and the proceeds distributed according to law and agreeably to the prayer of the libellant; and how you have executed this warrant that you make return according to law.

Witness the Honorable Edward H. Durell, judge of the said court, at New Orleans, this 27th day of February, 1864, and the 88th year of the independence of the United States.

[SEAL.] (Sig.) K. LOEW, *D'y Clerk.*

4 *Marshal's return.*

Rec. Feb'y 27th, 1864, and on the 2d March, 1864, served copy of the admiralty warrant and the libel on Prize Master A. L. Emerson, on board the st'r Grey Jacket, personally, and seized and took into my possession the said steamer Grey Jacket, her tackle, &c., and cargo, and published monition in the New Orleans Times, a daily newspaper printed and published in New Orleans, on the 3, 5, 7, 11, 14th March, 1864. Ret. 22 March, 1864.

JAS. GRAHAM, *U. S. Marshal.*

United States vs. *Steamer Grey Jacket, her tackle, apparel, furniture, and cargo.*

In the United States district court, eastern district of Louisiana, No. 7,820.—In obedience to an admiralty warrant, to me directed in the above-entitled suit, I have seized and taken into my possession the steamer Grey Jacket, her tackle, &c., and cargo, now libelled by the United States for the causes set forth in the libel now pending in the district court of the United States And I do hereby cite and admonish the owner or owners thereof, and all and every person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said steamer Grey Jacket, her tackle, &c., and cargo, should not be condemned or forfeited to the United States, and be sold agreeably to the prayer of libellants.

United States Marshal's Office, New Orleans, second day of March, 1864.

Mh 3, 5, 7, 11, 14.

JAMES GRAHAM, *U. S. Marshal.*

5 In the matter of the St'r Grey Jacket and cargo, a prize.

PRIZE COMMISSIONERS' OFFICE,
New Orleans, Feb'y 26, 1864.

To the hon. the judge of the district court of the United States for the eastern district of Louisiana:

The undersigned, prize commissioners of this honorable court, respectfully report that on the 25 day of Feb'ry, A. D. 186 , they received notice

from Acting Ensign A. S. Emerson, of the U. S. st'r Kennebec, of which W. P. McCann is commander, and prize master of the st'r Grey Jacket; that the said A. L. Emerson brought with him into this city a certain vessel, called the Grey Jacket, and cargo, as a prize of the U. S. st'r Kennebec; that said steamer had been captured on Thursday, the 31st day of December, 1863, on or about 10 o'clock a. m., about 41 miles south of the Mobile blockade, for violating the rules govering the blockade at present instituted by the United States government; and the said Emerson and a prize crew had been appointed by said Wm. P. McCann to bring said prize into this port, and report her as required by the law and the usages in such cases observed.

That the said prize master did seasonably deliver to us all such papers, passes, documents, &c., as were found on board of the captured steamer, and having a reference to and a connection with the captured property, and which were in the possession, custody, or power of the captors, which
6 documents, were, by one of us prize commissioners, regularly marked and numbered as one package, A, and the said prize master made a deposition identifying said documents and complying in all respects with the law; which deposition and the said documents are herewith transmitted to your honorable court.

That on the same day the said prize master produced to me three witnesses, persons captured with the said steamer, to wit:

1st. Timothy Meaher, captain of said vessel.

2d. P. M. Flynn, mate of said vessel.

3d. Chs. Newberry, engineer of said vessel.

That we examined said three persons in preparatorio upon the standing interrogatories which have been adopted by the honorable court, as the same are found in Upton's Work on Prize Courts, (page 479, 3d edition;) that said witnesses were examined separately on oath, and not in presence of
7 each other and unattended by counsel, after each had taken the necessary and prescribed oath to make true answer, &c., which answers were written down as required by law, each one separately to each interrogatory; and when entirely answered the said answers were signed by each witness respectively, as the same are now transmitted to your honorable court.

That we proceeded aboard of said vessel, the Grey Jacket, and examined her condition, and that it was impossible to state whether bulk had been broken or not; that the cargo consists of cotton, turpentine and rosin, and that it is impossible to ascertain exactly the nature or quality of the cargo without an unloading and undelivery of the same, which proceeding we now recommend to the honorable court; that we secured the hatches of said steamer with a view to the protection of the cargo until it is undelivered.

That we took possession of the said cargo on the 26th day of February, 1864, and turned over the same to James Graham, U. S. marshal of this court, who is to safely keep the same until further order of the court. All of which, including the deposition of said Emerson, with the documents by him identified, and the answers to the interrogatories taken as above, are now securely sealed, and are hereby submitted to this honorable court and deposited in its custody.

(Sig.) M. HAHN,
ROB'T RITCHIE,
U. S. Prize Commissioners.

8 District court of the United States for the eastern district of Louisiana.

In the matter of the steamer Grey Jacket and her cargo, a prize.

A. L. Emerson, prize master of the steamer Grey Jacket, detached from the U. S. S. Kennebec, of which W. P. McCann is commander, being duly sworn, deposes and says that the steamer Grey Jacket was captured on Thursday, the 31st day of December, 1863, about 10 a. m., about 41 miles south of the Mobile blockade, for violating the rules regulating the blockade at present instituted by the U. S. government; and said A. L. Emerson deposes and says that certain papers, marked A, and further identified by the initial letters put on them by U. S. Prize Commissioner Robert Ritchie, are the same that were captured with the steamer Grey Jacket, and that the deponent has delivered to the prize commissioner each and every document, paper, and writing whatsoever, received by him relating to the aforesaid captured property, in the same state and condition in which he received them, without "fraud, subornation, or embezzlement," and without any addition or alterations whatsoever; and he does not know, nor does he believe, that any of the documents are missing or wanting.

And deponent further says that if at any time hereafter, and before the final condemnation or acquital of said captured property, any further or other paper relating thereto shall be found or discovered to his knowledge, they shall be delivered up, or information thereof given to the prize commissioners of this district, or to the honorable court.

Sworn to and signed before me, United States prize commissioner, this the 25th day of Febr'y, 1864, New Orleans, La.

ROB. RITCHIE, *Prize Commissioner.*
A. L. EMERSON, *Acting Ensign.*

9 *Letter from Commodore Bell to Judge Durell.*

U. S. STEAM SLOOP PENSACOLA,
Off New Orleans, La., January 24th, 1864.

SIR: There are about 150 bales of cotton on board the U. S. steamer Holly Hock, taken from prize steamer Grey Jacket, now lying aground at Pass a l'Outre. There are about 300 more bales to be taken from her. The prize master is still on board of the vessel trying to save her and cargo, and will at the first opportunity appear to present the case to the court. In the mean time, the cotton on board of the Holly Hock, and that which is now coming up the river, should be stored.

Will your honor be good enough to give the necessary order for the reception of her cargo by the marshal?

10 I am, very respectfully, your obedient servant,

H. H. BELL, *Commodore.*

To his honor E. H. DURALDE, *Judge of the United States dist. court.*

James Graham, esq., U. S. marshal:

You will please take in charge, and remove to a secure place, 152 bales and 5 crates of cotton, on board of the U. S. steamer Holly Hock, being a part of the cargo of the prize steamer Grey Jacket.

N. O., Jan'ry 25th, 1864.

(Sig.) ROB. RITCHIE, *Prize Comm'r.*

James Graham, esq., U. S. marshal:

You will please take in charge, and remove to a secure place, 127 bales (more or less) of cotton, 6 bbls. of turpentine, and 4 bbls. of rosin, now
11 on board the barge Mingo, being part of the cargo of the prize steamer Grey Jacket.

(Sig.) ROB. RITCHIE, *Prize Comm'r.*

James Graham, esq., U. S. marshal:

You will please take in charge, and remove to a secure place, 216 bales of cotton and a quantity of loose cotton, now on board the U. S. steamer Holly Hock, being a part of the cargo of the prize steamer Grey Jacket.

ROB. RITCHIE, *Prize Comm'r.*

N. O., February 1st, 1864.

James Graham, esq., U. S. marshal:

You will please take in charge, and remove to a secure place, 5 bales of cotton, 13 bbls. of rosin, 1 bbl. of turpentine, and 19 demijohns of turpentine, now on board the U. S. steamer Glasscock, being the balance of the cargo of the prize steamer Grey Jacket.

12 N. O., Feb'y, 25th, 1864.

ROB. RITCHIE, *Prize Comm'r.*

Testimony taken in preparatorio.

District court of the United States for the east. district of Louisiana.

In the matter of the steamer Grey Jacket and cargo, a prize.

Deposition of Timothy Meaher, a witness produced, sworn, and examined in preparatorio on the 26th day of February, in the year 1864, at the prize commissioners' office, on the standing interrogatories established by the district court of the United States for the eastern district of Louisiana, the said witness having been produced for the purpose of such examination by Rufus Waples, esq., U. S. dist. att'y, on behalf of the captors of a certain vessel called the Grey Jacket.

To the 1st interrogatory the witness answers:

13 1st. I was born in Maine; I live in Mobile, and have lived there 30 years; I am a citizen of the State of Alabama, to which I owe my allegiance; I am married; my wife and family live in Alabama.

2d. I was present at the capture of the vessel and cargo.

3d. The seizure was made about 60 miles S.SE. of Mobile Bar, on the 31st December, 1863, at 10 a. m., by the U. S. st'r Kennebec. They fired one gun at us. There was no other war vessel in sight at the time of capture; there was a bark, a merchantman, in sight a few minutes previous to the capture. The vessel captured was a merchantman, built by me this year, for the purpose of carrying out this load of cotton. We had no commissions to make prizes.

4th. The Grey Jacket came out from Mobile by military permission,

14 with the American flag flying.

6th. I do not think the Kennebec had any right to act in the capture. The vessel has not yet been condemned.

7th. The name of the vessel taken was the Grey Jacket, and I was her captain. The vessel belonged to me.

8th. The Grey Jacket is of 374 tons burden. The crew consisted of 19 or 20 men and 3 passengers. I shipped the crew in Mobile, all about the same time.

9th. I was captain of the vessel at the time of capture. I was the owner of the vessel and of the cargo.

10th. I built the vessel last year in Mobile; she carried no guns; her name was the Grey Jacket.

15 11. The vessel was bound to Havana. The voyage began in Mobile and was to have ended in Havana. The vessel had on board a cargo of cotton when she set out on her voyage and about 25 bbls. of pitch, and had the same cargo on board when captured excepting about 60 bales

of cotton, which were thrown overboard owing to stress of weather. The cargo was put on board in the months of Nov. and Dec'r, 1863. There was nothing on board but the cargo I have mentioned. We had nothing contraband of war on board.

12th. The only papers concerning the vessel and cargo I had were taken by the prize master. This was the first voyage of the Grey Jacket.

13. The vessel carried cotton as her cargo.

14th. I owned both vessel and cargo.

15th. There was no sale of the vessel.

16 16th. The cargo was put on board in Mobile in the latter part of last year.

17th. There were no bills of lading signed for the cargo.

18. The papers were all taken by the capturing officer.

19. I do not recollect the latitude and longitude in which we were captured. We came out of Mobile in the evening about 7 o'clock, and next morning, the 31st, about 10 o'clock, we were captured.

20. All the papers we had on board were taken by the capturing officer.

21. I had heard, but did not positively know, that Mobile was blockaded. I have not been out of Mobile since the war commenced previous to this trip, and never knew of the blockade.

17 22. I don't know that Mobile was under an order of blockade by the United States government; I never had any notice of it; I never saw any order of blockade; no notice had been endorsed on any of the ship's papers of any blockade. The first knowledge I had of it was a rifle-shot across my bows.

23. The papers were not examined by any officer previous to the capture by the Kennebec.

24. The steamer Grey Jacket came out of Mobile and had gone 60 miles on her voyage to Havana when captured.

25th. The Grey Jacket was never seized as prize before; she is a new vessel.

26. I have sustained a loss by the seizure of the vessel and cargo, by this detention and my imprisonment and the many inconveniences which

18 have arisen from the same.

27. The vessel and cargo are not insured.

28. In case we had arrived at our destined port I think I should have reshipped the cargo to some port where I could have received a better price for it than I could obtain there.

29th. The cotton was raised in Alabama.

30th. The cargo was put aboard alongside the shore.

31st. I know of no other papers concerning the vessel and cargo other than those taken by the boarding officer.

32. Same answer as to interr'y 31st.

33. Bulk was not broken during the voyage, but I hear it has been broken since the capture.

19 34. There were three passengers on board. One was named Soto and one Roach and the third O'Hara. They had no interest in the vessel or cargo. They were bound for Havana. There were no persons secreted on board to my knowledge. I think Mr. Soto was the only one on board who was a citizen of the Confederate States, and he was an invalid.

35th. What papers we had on board that were signed by me were entirely true and fair.

36th. The Grey Jacket was steering her course direct to Havana when pursued. Her course was not altered upon the appearance of the capturing vessel.

37th. The vessel was built by me and is owned by me.

38th. There were no arms, ammunition, or munitions of war of any kind on board the Grey Jacket.

20 39th. The vessel and cargo belonged to me and we were destined for Havana.

40th. The Grey Jacket never sailed under the convoy of armed vessel or vessels.

41. I never had been warned of any blockade; I heard there was a blockade.

42. The Grey Jacket had no commission to make prizes or cruize against the persons or property of citizens of the United States.

43. The Grey Jacket never sailed in the company or concert with any armed vessel or vessels whatever.

(Sig.) TIM. MEAHER.

Sworn to and subscribed before me this 26th Feb'y, 1864.

(Sig.) ROB. RITCHIE, *Prize Comm'r.*

21 Dist. court of the U. S., eastern dist. of Louisiana.

In the matter of the steamer Grey Jackett and cargo.

Deposition of P. M. Flynn, mate of the steamer Grey Jackett, a witness produced, sworn, and examined in preparatorio on the 26th day of Febr'y, 1864, at the office of R. Bitchie, prize commissioner, on the standing interrogatories established by the dist. court of the U. S. for the east dist. of Louisiana, the said witness having been produced for the purpose of such examination by R. Waples, esq., U. S. dist. att'y, on behalf of the captors of a certain vessel called the steamer Grey Jacket.

To the 1st interrogatory the witness answer: I was born in Ireland; have have lived in Mobile 15 or more years. I have been a citizen of the U. S. and consider myself now a citizen of the State of Alabama, to which State I owe allegiance. I am married; my family reside in Mobile.

22 2. I was present at the captuae of the Grey Jacket and cargo.

3d. The capture was made, as near as I can judge, about 40 miles southwest off Mobile Point, on the 31st Dec'ber last. The cargo was carried to New Orleans. The vessel is now aground at Pass a l'Outre. The Grey Jacket has neither commission or letters of marque to act as a privateer. She was a merchantman. She was taken for running the blockade.

4th. The Grey Jacket sailed under English colors and had no others.

5th. We made no resistance and could not have made any. We were in a disabled condition; the machinery had broken down. We fired no guns and had none. We were taken by the U. S. gunboat Kennebec; no

23 other ships in sight or within signal distance at the time of capture. Our vessel was a merchantman and acted under no commission. The capturing vessel was a man-of-war; she is a gunboat.

6. Presumes the capturing vessel had a commission to make prizes. The Grey Jacket had never been seized or condemned before; she was very new and built lately in Mobile; she had been but a week off the stocks when she cleared.

7. The name of the captured vessel is the Grey Jacket; her captain's name is Tim. Maher, who was likewise the owner of the vessel. I have known the vessel for about 2 months, having assisted in her fitting out, and the capt. some 15 years. The capt. took possession of her at Mobile. The captain's fixed residence is Mobile, where his family resided for some 20

24 years. The captain was born in the State of Maine and is a citizen of the U. S.

8th. The tonnage of the Gray Jacket is 400 and odd tons. The crew consisted in about 23 men when left and taken, and were Italians, Dutch—all for-

eigners, I believe; they all came aboard at Mobile at the same time, a few days before sailing; the captain shipped them in Mobile.

9th. I belonged to the crew at the time of capture as mate. I had some 3 bbls. of turpentine on board that belonged to me, but this formed no portion of the cargo properly. The crew had some tobacco and turpentine on board, which they were permitted to carry so as to enable them to make something on it.

10th. 2 months. I saw her first in Mobile when being built; she
25 carried no guns; she had the same men when she left Mobile as when taken; she is an American-built vessel; was always called the Grey Jacket, and never knew her by any other name.

11th. I believe they Grey Jacket was bound to Havana on the voyage in which she was taken. The voyage began at Mobile and was to have ended at Havana. She had a cargo of cotton and rosin. She cleared with 513 full bales of cotton, a portion of which were split to make 2 bales out of 1 for stowage, and 25 bbls. rosin, turpentine and tobacco, some 8 bbls. turpentine, and some jugs belonging to the crew. This cargo was put aboard in Mobile about December last. I know that she had no goods contraband of war on board.

12. The Grey Jacket had, as I understood, a pass from the Conf. government to ship half the goods on government account, and the other half
26 belonged to Capt. Maher. Her voyage began at Mobile and was to have ended atHavana. I have stated the kind of cargo the vessel had, and this cargo was to have been delivered at Havana. Previous to the capture the Grey Jacket sailed from Mobile and was her first trip.

13. She had the same cargo when she left and when taken, except a portion of the deck load that was thrown overboard during a gale. The cargo was put aboard in Dec'r last.

14. The owners of the vessel were Capt. Maher & Bro. They also owned half the cargo; the balance was for Conf. government account. The vessel was built at Maher & Bro.'s saw mill; they are men of property; all the timber was cut from their own land and sawed at the own mill, and they purchased the cargo with their own funds. The greatest portion of the
27 cotton was produced upon Maher's lands; I believe they have still some cotton on hand. I understood they had built the Grey Jacket expressly to carry their own cotton to Havana, but they had to allow the government an interest of one half in the cargo. Otherwise they would not have been permitted to leave. Maher & Bro. are Americans.

15th. Don't know about bill of sale.

16. The cargo was put aboard in Mobile in Dec'r last.

17th. I know nothing about bills of lading; there were none, I think.

18. I had none in my possession.

19. Don't know the degrees of latitude and longitude; there was no bearings taken; it was a stormy morning; but we were taken about 40
28 miles off Mobile Point. There was no charter-party.

20th. Don't know; none were burnt, or destroyed, or thrown overboard.

21st. I knew that Mobile was blockaded and that there was danger in running out. I knew that Mobile was blockaded since 2 years by the U. S. forces.

22. Mobile was under blockade by the U. S. forces when we attempted to get away.

23. The Grey Jacket had not been visited by a U. S. officer previous to the capture.

24th. I know that the Grey Jacket, on the trip in which she was taken, had attempted to sail covertly and secretly from the port of Mobile,

1 United States district court, eastern district of Louisiana.

THE UNITED STATES OF AMERICA
against
THE STEAMER GREY JACKET, HER TACKLE, &C., AND CARGO. } In prize. No. 7,820.

To the Honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The libel of information in prize filed herein by Rufus Waples, attorney of the United States for the eastern district of Louisiana, on behalf of said libellants and of the naval captors in interest, respectfully represents to this honorable court:

First. That the steamer or vessel called the Grey Jacket, with the goods, wares, and merchandise laden therein, was captured as lawful prize on or about the 31st day of Dec'r, 1863, and brought to Pass a l'Outre, within the jurisdiction of this court, by the United States gunboat Kennebec, W. P. McCann, United States navy, commanding.

Second. That the steamer or vessel called the Grey Jacket, with the goods, wares, and merchandise laden therein, were at the time of such capture, and are now rightfully subject to such capture, and were and are lawful prize, and as such should be condemned and forfeited to the use of the libellants.

Third. That the said steamer or vessel called the Grey Jacket, with the goods, wares, and merchandise laden therein, have been brought to the port of New Orleans, and are now at said port, and within the jurisdiction of this honorable court.

Fourth. That by reason of the premises, the said steamer or vessel called the Grey Jacket, her tackle, apparel, and furniture, with the goods, wares, and merchandise laden therein, became and are liable to condemnation and forfeiture as lawful prize, and should be condemned and forfeited as lawful prize to the libellants.

That all and singular the premises are and were true, and within the jurisdiction of this honorable court; in attestation whereof, the said attorney exhibits the said vessel's papers, and the documents, &c., found on board, together with the testimony of the witnesses, duly taken in preparatorio by the prize commissioners appointed by this honorable court, which are or will be duly filed in the registry of this court.

Wherefore, the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said steamer or vessel called the Grey Jacket, and her tackle, apparel, and furniture, and the goods, wares, and merchandise laden therein, in this behalf to be made, and that all persons interested in the said vessel and her cargo may be cited to answer in the premises; and that all due proceedings being had therein, this honorable court may be pleased to decree for the condemnation and forfeiture aforesaid, and that the said steamer, her tackle, apparel, and furniture, with the goods, wares and merchandise laden therein, may be condemned as lawful prize to the use of the said United States.

Dated New Orleans, Feb'ry 26th, 1864.

RUFUS WAPLES,
United States District Attorney.

2 Let admiralty process issue as prayed for.
Feb'y 27, 1864.
(Sig.) K. LOEW, *D'y Clk.*

REC. 164—1

3 The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the steamer Grey Jacket, her tackle and cargo, now libelled by the United States of America, for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners and all and every other person or persons having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said steamer and cargo should not be condemned as prize forfeited to the U. S., sold, and the proceeds distributed according to law: and agreeably to the prayer of the libellant; and how you have executed this warrant that you make return according to law.

Witness the Honorable Edward H. Durell, judge of the said court, at New Orleans, this 27th day of February, 1864, and the 88th year of the independence of the United States.

[SEAL.] (Sig.) K. LOEW, *D'y Clerk.*

4 *Marshal's return.*

Rec. Feb'y 27th, 1864, and on the 2d March, 1864, served copy of the admiralty warrant and the libel on Prize Master A. L. Emerson, on board the st'r Grey Jacket, personally, and seized and took into my possession the said steamer Grey Jacket, her tackle, &c., and cargo, and published monition in the New Orleans Times, a daily newspaper printed and published in New Orleans, on the 3, 5, 7, 11, 14th March, 1864. Ret. 22 March, 1864.

JAS. GRAHAM, *U. S. Marshal.*

United States vs. *Steamer Grey Jacket, her tackle, apparel, furniture, and cargo.*

In the United States district court, eastern district of Louisiana, No. 7,820.—In obedience to an admiralty warrant, to me directed in the above-entitled suit, I have seized and taken into my possession the steamer Grey Jacket, her tackle, &c., and cargo, now libelled by the United States for the causes set forth in the libel now pending in the district court of the United States And I do hereby cite and admonish the owner or owners thereof, and all and every person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said steamer Grey Jacket, her tackle, &c., and cargo, should not be condemned or forfeited to the United States, and be sold agreeably to the prayer of libellants.

United States Marshal's Office, New Orleans, second day of March, 1864.

Mh 3, 5, 7, 11, 14.

JAMES GRAHAM, *U. S. Marshal.*

5 In the matter of the St'r Grey Jacket and cargo, a prize.

PRIZE COMMISSIONERS' OFFICE,
New Orleans, Feb'y 26, 1864.

To the hon. the judge of the district court of the United States for the eastern district of Louisiana:

The undersigned, prize commissioners of this honorable court, respectfully report that on the 25 day of Feb'ry, A. D. 186 , they received notice

from Acting Ensign A. S. Emerson, of the U. S. st'r Kennebec, of which W. P. McCann is commander, and prize master of the st'r Grey Jacket; that the said A. L. Emerson brought with him into this city a certain vessel, called the Grey Jacket, and cargo, as a prize of the U. S. st'r Kennebec; that said steamer had been captured on Thursday, the 31st day of December, 1863, on or about 10 o'clock a. m., about 41 miles south of the Mobile blockade, for violating the rules govering the blockade at present instituted by the United States government; and the said Emerson and a prize crew had been appointed by said Wm. P. McCann to bring said prize into this port, and report her as required by the law and the usages in such cases observed.

That the said prize master did seasonably deliver to us all such papers, passes, documents, &c., as were found on board of the captured steamer, and having a reference to and a connection with the captured property, and which were in the possession, custody, or power of the captors, which
6 documents, were, by one of us prize commissioners, regularly marked and numbered as one package, A, and the said prize master made a deposition identifying said documents and complying in all respects with the law; which deposition and the said documents are herewith transmitted to your honorable court.

That on the same day the said prize master produced to me three witnesses, persons captured with the said steamer, to wit:

1st. Timothy Meaher, captain of said vessel.

2d. P. M. Flynn, mate of said vessel.

3d. Chs. Newberry, engineer of said vessel.

That we examined said three persons in preparatorio upon the standing interrogatories which have been adopted by the honorable court, as the same are found in Upton's Work on Prize Courts, (page 479, 3d edition;) that said witnesses were examined separately on oath, and not in presence of
7 each other and unattended by counsel, after each had taken the necessary and prescribed oath to make true answer, &c., which answers were written down as required by law, each one separately to each interrogatory; and when entirely answered the said answers were signed by each witness respectively, as the same are now transmitted to your honorable court.

That we proceeded aboard of said vessel, the Grey Jacket, and examined her condition, and that it was impossible to state whether bulk had been broken or not; that the cargo consists of cotton, turpentine and rosin, and that it is impossible to ascertain exactly the nature or quality of the cargo without an unloading and undelivery of the same, which proceeding we now recommend to the honorable court; that we secured the hatches of said steamer with a view to the protection of the cargo until it is undelivered.

That we took possession of the said cargo on the 26th day of February, 1864, and turned over the same to James Graham, U. S. marshal of this court, who is to safely keep the same until further order of the court. All of which, including the deposition of said Emerson, with the documents by him identified, and the answers to the interrogatories taken as above, are now securely sealed, and are hereby submitted to this honorable court and deposited in its custody.

(Sig.)

M. HAHN,
ROB'T RITCHIE,
U. S. Prize Commissioners.

8 District court of the United States for the eastern district of Louisiana.

In the matter of the steamer Grey Jacket and her cargo, a prize.

A. L. Emerson, prize master of the steamer Grey Jacket, detached from the U. S. S. Kennebec, of which W. P. McCann is commander, being duly sworn, deposes and says that the steamer Grey Jacket was captured on Thursday, the 31st day of December, 1863, about 10 a. m., about 41 miles south of the Mobile blockade, for violating the rules regulating the blockade at present instituted by the U. S. government; and said A. L. Emerson deposes and says that certain papers, marked A, and further identified by the initial letters put on them by U. S. Prize Commissioner Robert Ritchie, are the same that were captured with the steamer Grey Jacket, and that the deponent has delivered to the prize commissioner each and every document, paper, and writing whatsoever, received by him relating to the aforesaid captured property, in the same state and condition in which he received them, without "fraud, subornation, or embezzlement," and without any addition or alterations whatsoever; and he does not know, nor does he believe, that any of the documents are missing or wanting.

And deponent further says that if at any time hereafter, and before the final condemnation or acquital of said captured property, any further or other paper relating thereto shall be found or discovered to his knowledge, they shall be delivered up, or information thereof given to the prize commissioners of this district, or to the honorable court.

Sworn to and signed before me, United States prize commissioner, this the 25th day of Febr'y, 1864, New Orleans, La.

ROB. RITCHIE, *Prize Commissioner.*
A. L. EMERSON, *Acting Ensign.*

9 *Letter from Commodore Bell to Judge Durell.*

U. S. Steam Sloop Pensacola,
Off New Orleans, La., January 24th, 1864.

Sir: There are about 150 bales of cotton on board the U. S. steamer Holly Hock, taken from prize steamer Grey Jacket, now lying aground at Pass a l'Outre. There are about 300 more bales to be taken from her. The prize master is still on board of the vessel trying to save her and cargo, and will at the first opportunity appear to present the case to the court. In the mean time, the cotton on board of the Holly Hock, and that which is now coming up the river, should be stored.

Will your honor be good enough to give the necessary order for the reception of her cargo by the marshal?

10 I am, very respectfully, your obedient servant,

H. H. BELL, *Commodore.*

To his honor E. H. Duralde, *Judge of the United States dist. court.*

James Graham, esq., U. S. marshal:

You will please take in charge, and remove to a secure place, 152 bales and 5 crates of cotton, on board of the U. S. steamer Holly Hock, being a part of the cargo of the prize steamer Grey Jacket.

N. O., Jan'ry 25th, 1864.

(Sig.) ROB. RITCHIE, *Prize Comm'r.*

James Graham, esq., U. S. marshal:

You will please take in charge, and remove to a secure place, 127 bales (more or less) of cotton, 6 bbls. of turpentine, and 4 bbls. of rosin, now
11 on board the barge Mingo, being part of the cargo of the prize steamer Grey Jacket.

(Sig.) ROB. RITCHIE, *Prize Comm'r.*

James Graham, esq., U. S. marshal:

You will please take in charge, and remove to a secure place, 216 bales of cotton and a quantity of loose cotton, now on board the U. S. steamer Holly Hock, being a part of the cargo of the prize steamer Grey Jacket.

ROB. RITCHIE, *Prize Comm'r.*

N. O., February 1st, 1864.

James Graham, esq., U. S. marshal:

You will please take in charge, and remove to a secure place, 5 bales of cotton, 13 bbls. of rosin, 1 bbl. of turpentine, and 19 demijohns of turpentine, now on board the U. S. steamer Glasscock, being the balance of the cargo of the prize steamer Grey Jacket.

12 N. O., Feb'y, 25th, 1864.

ROB. RITCHIE, *Prize Comm'r.*

Testimony taken in preparatorio.

District court of the United States for the east. district of Louisiana.

In the matter of the steamer Grey Jacket and cargo, a prize.

Deposition of Timothy Meaher, a witness produced, sworn, and examined in preparatorio on the 26th day of February, in the year 1864, at the prize commissioners' office, on the standing interrogatories established by the district court of the United States for the eastern district of Louisiana, the said witness having been produced for the purpose of such examination by Rufus Waples, esq., U. S. dist. att'y, on behalf of the captors of a certain vessel called the Grey Jacket.

To the 1st interrogatory the witness answers:

13 1st. I was born in Maine; I live in Mobile, and have lived there 30 years; I am a citizen of the State of Alabama, to which I owe my allegiance; I am married; my wife and family live in Alabama.

2d. I was present at the capture of the vessel and cargo.

3d. The seizure was made about 60 miles S.SE. of Mobile Bar, on the 31st December, 1863, at 10 a. m., by the U. S. st'r Kennebec. They fired one gun at us. There was no other war vessel in sight at the time of capture; there was a bark, a merchantman, in sight a few minutes previous to the capture. The vessel captured was a merchantman, built by me this year, for the purpose of carrying out this load of cotton. We had no commissions to make prizes.

4th. The Grey Jacket came out from Mobile by military permission,

14 with the American flag flying.

6th. I do not think the Kennebec had any right to act in the capture. The vessel has not yet been condemned.

7th. The name of the vessel taken was the Grey Jacket, and I was her captain. The vessel belonged to me.

8th. The Grey Jacket is of 374 tons burden. The crew consisted of 19 or 20 men and 3 passengers. I shipped the crew in Mobile, all about the same time.

9th. I was captain of the vessel at the time of capture. I was the owner of the vessel and of the cargo.

10th. I built the vessel last year in Mobile; she carried no guns; her name was the Grey Jacket.

15 11. The vessel was bound to Havana. The voyage began in Mobile and was to have ended in Havana. The vessel had on board a cargo of cotton when she set out on her voyage and about 25 bbls. of pitch, and had the same cargo on board when captured excepting about 60 bales

of cotton, which were thrown overboard owing to stress of weather. The cargo was put on board in the months of Nov. and Dec'r, 1863. There was nothing on board but the cargo I have mentioned. We had nothing contraband of war on board.

12th. The only papers concerning the vessel and cargo I had were taken by the prize master. This was the first voyage of the Grey Jacket.

13. The vessel carried cotton as her cargo.

14th. I owned both vessel and cargo.

15th. There was no sale of the vessel.

16 16th. The cargo was put on board in Mobile in the latter part of last year.

17th. There were no bills of lading signed for the cargo.

18. The papers were all taken by the capturing officer.

19. I do not recollect the latitude and longitude in which we were captured. We came out of Mobile in the evening about 7 o'clock, and next morning, the 31st, about 10 o'clock, we were captured.

20. All the papers we had on board were taken by the capturing officer.

21. I had heard, but did not positively know, that Mobile was blockaded. I have not been out of Mobile since the war commenced previous to this trip, and never knew of the blockade.

17 22. I don't know that Mobile was under an order of blockade by the United States government; I never had any notice of it; I never saw any order of blockade; no notice had been endorsed on any of the ship's papers of any blockade. The first knowledge I had of it was a rifle-shot across my bows.

23. The papers were not examined by any officer previous to the capture by the Kennebec.

24. The steamer Grey Jacket came out of Mobile and had gone 60 miles on her voyage to Havana when captured.

25th. The Grey Jacket was never seized as prize before; she is a new vessel.

26. I have sustained a loss by the seizure of the vessel and cargo, by this detention and my imprisonment and the many inconveniences which

18 have arisen from the same.

27. The vessel and cargo are not insured.

28. In case we had arrived at our destined port I think I should have reshipped the cargo to some port where I could have received a better price for it than I could obtain there.

29th. The cotton was raised in Alabama.

30th. The cargo was put aboard alongside the shore.

31st. I know of no other papers concerning the vessel and cargo other than those taken by the boarding officer.

32. Same answer as to interr'y 31st.

33. Bulk was not broken during the voyage, but I hear it has been broken since the capture.

19 34. There were three passengers on board. One was named Soto and one Roach and the third O'Hara. They had no interest in the vessel or cargo. They were bound for Havana. There were no persons secreted on board to my knowledge. I think Mr. Soto was the only one on board who was a citizen of the Confederate States, and he was an invalid.

35th. What papers we had on board that were signed by me were entirely true and fair.

36th. The Grey Jacket was steering her course direct to Havana when pursued. Her course was not altered upon the appearance of the capturing vessel.

37th. The vessel was built by me and is owned by me.

38th. There were no arms, ammunition, or munitions of war of any kind on board the Grey Jacket.

20 39th. The vessel and cargo belonged to me and we were destined for Havana.

40th. The Grey Jacket never sailed under the convoy of armed vessel or vessels.

41. I never had been warned of any blockade; I heard there was a blockade.

42. The Grey Jacket had no commission to make prizes or cruize against the persons or property of citizens of the United States.

43. The Grey Jacket never sailed in the company or concert with any armed vessel or vessels whatever.

(Sig.) TIM. MEAHER.

Sworn to and subscribed before me this 26th Feb'y, 1864.

(Sig.) ROB. RITCHIE, *Prize Comm'r.*

21 Dist. court of the U. S., eastern dist. of Louisiana.

In the matter of the steamer Grey Jackett and cargo.

Deposition of P. M. Flynn, mate of the steamer Grey Jackett, a witness produced, sworn, and examined in preparatorio on the 26th day of Febr'y, 1864, at the office of R. Bitchie, prize commissioner, on the standing interrogatories established by the dist. court of the U. S. for the east dist. of Louisiana, the said witness having been produced for the purpose of such examination by R. Waples, esq., U. S. dist. att'y, on behalf of the captors of a certain vessel called the steamer Grey Jacket.

To the 1st interrogatory the witness answer: I was born in Ireland; have have lived in Mobile 15 or more years. I have been a citizen of the U. S. and consider myself now a citizen of the State of Alabama, to which State I owe allegiance. I am married; my family reside in Mobile.

22 2. I was present at the captuae of the Grey Jacket and cargo.

3d. The capture was made, as near as I can judge, about 40 miles southwest off Mobile Point, on the 31st Dec'ber last. The cargo was carried to New Orleans. The vessel is now aground at Pass a l'Outre. The Grey Jacket has neither commission or letters of marque to act as a privateer. She was a merchantman. She was taken for running the blockade.

4th. The Grey Jacket sailed under English colors and had no others.

5th. We made no resistance and could not have made any. We were in a disabled condition; the machinery had broken down. We fired no guns and had none. We were taken by the U. S. gunboat Kennebec; no

23 other ships in sight or within signal distance at the time of capture. Our vessel was a merchantman and acted under no commission. The capturing vessel was a man-of-war; she is a gunboat.

6. Presumes the capturing vessel had a commission to make prizes. The Grey Jacket had never been seized or condemned before; she was very new and built lately in Mobile; she had been but a week off the stocks when she cleared.

7. The name of the captured vessel is the Grey Jacket; her captain's name is Tim. Maher, who was likewise the owner of the vessel. I have known the vessel for about 2 months, having assisted in her fitting out, and the capt. some 15 years. The capt. took possession of her at Mobile. The captain's fixed residence is Mobile, where his family resided for some 20

24 years. The captain was born in the State of Maine and is a citizen of the U. S.

8th. The tonnage of the Gray Jacket is 400 and odd tons. The crew consisted in about 23 men when left and taken, and were Italians, Dutch—all for-

eigners, I believe; they all came aboard at Mobile at the same time, a few days before sailing; the captain shipped them in Mobile.

9th. I belonged to the crew at the time of capture as mate. I had some 3 bbls. of turpentine on board that belonged to me, but this formed no portion of the cargo properly. The crew had some tobacco and turpentine on board, which they were permitted to carry so as to enable them to make something on it.

10th. 2 months. I saw her first in Mobile when being built; she
25 carried no guns; she had the same men when she left Mobile as when taken; she is an American-built vessel; was always called the Grey Jacket, and never knew her by any other name.

11th. I believe they Grey Jacket was bound to Havana on the voyage in which she was taken. The voyage began at Mobile and was to have ended at Havana. She had a cargo of cotton and rosin. She cleared with 513 full bales of cotton, a portion of which were split to make 2 bales out of 1 for stowage, and 25 bbls. rosin, turpentine and tobacco, some 8 bbls. turpentine, and some jugs belonging to the crew. This cargo was put aboard in Mobile about December last. I know that she had no goods contraband of war on board.

12. The Grey Jacket had, as I understood, a pass from the Conf. government to ship half the goods on government account, and the other half
26 belonged to Capt. Maher. Her voyage began at Mobile and was to have ended atHavana. I have stated the kind of cargo the vessel had, and this cargo was to have been delivered at Havana. Previous to the capture the Grey Jacket sailed from Mobile and was her first trip.

13. She had the same cargo when she left and when taken, except a portion of the deck load that was thrown overboard during a gale. The cargo was put aboard in Dec'r last.

14. The owners of the vessel were Capt. Maher & Bro. They also owned half the cargo; the balance was for Conf. government account. The vessel was built at Maher & Bro.'s saw mill; they are men of property; all the timber was cut from their own land and sawed at the own mill, and they purchased the cargo with their own funds. The greatest portion of the
27 cotton was produced upon Maher's lands; I believe they have still some cotton on hand. I understood they had built the Grey Jacket expressly to carry their own cotton to Havana, but they had to allow the government an interest of one half in the cargo. Otherwise they would not have been permitted to leave. Maher & Bro. are Americans.

15th. Don't know about bill of sale.

16. The cargo was put aboard in Mobile in Dec'r last.

17th. I know nothing about bills of lading; there were none, I think.

18. I had none in my possession.

19. Don't know the degrees of latitude and longitude; there was no bearings taken; it was a stormy morning; but we were taken about 40
28 miles off Mobile Point. There was no charter-party.

20th. Don't know; none were burnt, or destroyed, or thrown overboard.

21st. I knew that Mobile was blockaded and that there was danger in running out. I knew that Mobile was blockaded since 2 years by the U. S. forces.

22. Mobile was under blockade by the U. S. forces when we attempted to get away.

23. The Grey Jacket had not been visited by a U. S. officer previous to the capture.

24th. I know that the Grey Jacket, on the trip in which she was taken, had attempted to sail covertly and secretly from the port of Mobile,

29 then under a blockade. She could not have left otherwise than secretly.

25th. The Grey Jacket had never been condemned before.

26. I sustained a loss by the seizure and have rec'd no indemnity.

27. She was not insured that I know of.

28. Had the vessel arrived at Havana, she, with her cargo would have (belonged) been the property of the parties I have named.

29. No.

30. The cargo was put on board in Mobile, from the shore or quay.

31. There are other countries in which goods like the cargo of the Grey Jacket are produced.

32. I don't know that any papers were delivered out of the vessel. I saw none.

30 33. No bulk broken, except heaving overboard some 60 bales during the storm. These bales had been on deck.

34. We had 3 passangers, O'Hara, Soto, and Roach, bound for Havana. Two of them had done business in Mobile. I don't know the business of the third. They had embarked at Mobile in Dec'r last. Two went to Havana on account of bad health. I don't know the business of the 3d; he had perhaps tried to get away from the south, but I don't know. Nobody was secreted. One man had tried to conceal himself, but we found him out before we left Mobile and put him ashore.

35th. Don't know.

36th. She steered for Havana when pursued and taken. We did
31 not alter our course upon the appearance of the man-of-war; we were disabled and could not think of running away.

37th. Don't know of any sale. Had the vessel arrived at Havana she would have belonged to the parties named.

38th. No guns, no arms, or ammunition on board.

39th. I have already answered this.

40th. She never sailed under the convoy of armed vessels.

41st, 42, and 43. She attempted to sail from Mobile, which was blockaded and we knew it, and I don't know that she ever sailed in the convoy of armed vessel or vessels. She could not have done so without my knowledge, because she had newly been completed, and I had not lost sight of her since here completion.

P. M. FLYNN.

32 Sworn to and subscribed before me this 26th day of February, 1864.

ROB. RITCHIE, *Prize Comm'r.*

In the matter of the steamer Gray Jacket and cargo, a prize.

District court of the United States, east. dist. of La.

Deposition of Chs. Newberry, chief engineer, a witness produced, sworn, and examined in preparatorio on the 26th day of Feb'y, 1864, at the office of the United States prize commissioners, on the standing interrogatories established by the dist. court of the United States for the eastern district of Louisiana, the said witness having been produced for the purpose of such examination by Rufus Waples, esq., U. S. dist. attorney, in be-
33 half of the captors of a certain vessel called the Grey Jacket.

To the first interrogatory the witness answers:

1st. I was born in New Jersey, but live since 1836, in Mobile. I am married; my family is at Mobile. I am a citizen of Alabama.

2d. I was on board when the Grey Jacket was captured.

3d. The capture was made on the 31 day of December, 1863, about 50 miles outside of Mobile Point, and the captured vessel was taken to Pensacola. The captured vessel had no commission authorizing her to make prizes. The Grey Jacket was seized because she was a blockade runner.

4th. The Grey Jacket sailed under U. S. colors. There were no other colors on board that I know of.

34 5th. There was no resistance made by the vessel seized. There was one gun fired by the U. S. st'r Kennebec. The capture was made by the U. S. steamer Kennebec. There were no other vessels in sight, at least I did not see any. The captured vessel was a merchantman; the capturing vessel a U. S. man-of-war.

6th. I do not know whether the Kennebec had any commission to capture us or not.

7th. The captured vessel was called the Grey Jacket. The captain's name, T. Meaher. I have known the cap. for about 25 years, and the vessel about 8 months. I first saw her on the stocks at Mobile, Ala. The captain lives at Mobile with his family. He is a citizen of the United States; was born in the State of Maine.

35 8th. The Grey Jacket is of about 400 tons burthen. I do not know the exact number of men on board; I believe there were 22 in all (on board) including 3 passengers. I do not know what countrymen they were. The mate, P. M. Flynn, shipped them.

9th. I was chief engineer of the Grey Jacket at the time of her capture. I had no interest in the vessel or cargo. The brothers, J. M. & T. Meaher, owned the entire vessel and one half of the cargo. I am not certain, but think the Confederate government owns the other half.

10th. I have known the vessel about 8 months. She carried no guns. There were, I believe, 22 men on board before and at the time of the capture. She was built in Mobile, Ala., in the year 1863.

11th. The Grey Jacket was bound for Havana when seized by the 36 Kennebec. The voyage commenced at Mobile and was to have ended at Havana. When we left Mobile the Grey Jacket had on board 25 barrels of rosin and 500 bales of cotton, all of which, with the exception of about 60 bales that had been thrown overboard to lighten the vessel, were on board at the time of the capture. It was put on board in December, 1863, at Mobile, Ala.

12th. The Grey Jacket had no clearance papers from Mobile. We had a pass from the military authorities at the forts.

13. This question was fully answered in No. 11.

14. J. M. & T. Meaher own the vessel and half the cargo; the Confederate government owns the other half.

15th. The Grey Jacket was never sold. She was built by the present owners.

37 16. The lading of the Grey Jacket was put on at Mobile, Ala., in Dec'r, 1863. I do not know the names of laders and consignees.

17. I know nothing of any bills of lading.

18. I do not know anything of any papers which might show who the parties interested in the cargo and vessel are.

19. I cannot state the degrees of latitude and longitude in which we were captured. The capture was made about 50 miles to the southeast of Mobile Point, on the 31st of Dec'r, 1'63, at 10 a. m. There was no charter-party signed, but in order to obtain permission to leave the port the Grey Jacket had to take half of her cargo in government cotton.

20. I know nothing of any papers relating to the vessel or cargo.

38 21st. I was aware that Mobile is in a state of war with relation

to the United States government, and that it was blockaded by the naval forces of the United States. I cannot answer for the others.

22. I knew that Mobile was under an order of blockade by the United States government. I know this from common rumour and from having seen President Lincoln's proclamation.

23. Our papers were never examined by any federal officer previous to the capture.

24. The Grey Jacket never before attempted to run the blockade.

25. She had never been seized and condemned as prize before.

26. I have lost my wages by the seizure. I also suffer on account
39 of being detained. No indemnity has as yet been given or offered to me for this loss.

27th. The vessel was not insured, nor the cargo.

28th. If we had reached the destined point the cargo would have belonged to the persons already mentioned as the owners.

29. The cotton and rosin on board the Grey Jacket were produced in the State of Alabama.

30th. The cargo was taken on board directly from the shore at Mobile.

31. I know nothing of any papers relating to either the vessel or cargo.

32. I do not know that any papers were delivered to any one on board the Grey Jacket.

33d. There was bulk broken.

40 34th. There were three passengers on board. I do not know what their business was. One was a Frenchman, one Irish, and the other I cannot state. I know nothing about them.

35th. There were no papers at all on board, to my knowledge.

36th. The Grey Jacket was steering towards the port of Havana when we were pursued by the gunboat Kennebec. We did not change our course when the capturing vessel came in sight.

37. She was never sold or transferred to any one. She belongs to the builders, J. M. & T. Meaher.

38. There were no guns mounted, nor was there any ammunition or other warlike material on board.

39th. I have answered this interr'y fully in the preceding answers.

41 40th. The Grey Jacket never sailed in the convoy of any armed vessels.

41st. In her present voyage the Grey Jacket violated the blockade, by trying to sail from the port of Mobile.

42d. The Grey Jacket never sailed as a privateer.

43d. She never acted in company or concert with any armed vessels, cruizing against, pursuing and seizing the property and persons of citizens of the United States.

I have forgotten in my examination to state that the brothers J. M. and T. Meaher built the vessel for the express purpose of leaving the Confederacy with their property. I state this from personal knowledge, acquired in Mobile.

C. NEWBERRY.

Sworn to and subscribed before me this 26th February, 1864.

42 ROB. RITCHIE, *Prize Comm'r.*

Letter from captors, filed 8th March, 1864.

U. S. GUNBOAT KENNEBEC,
Off Mobile Bar, Jan'y 2, '64.

SIR: On the night of the 30th Dec'r ult. I discovered a sail running out of Mobile Bay. I got under way and pursued in the direction the vessel

was standing. She soon escaped in the darkness and I lost sight of her until the morning of the 31st., when I again discovered her, standing to the southward and eastward, attempting to escape from me. I fired a gun across her bow, when she hauled down her colors and soon after hove to.

At about 10 o'clock a. m. I sent a boat on board of her, in lat.
43 29° 34′, long. 88° 08′ 10″, forty-one miles south of Mobile Bar. I found her to be the steamer Grey Jacket, Captain Tim. Meaher, bound from Mobile to Havana, with a cargo of cotton, rosin, and turpentine. There was no other vessel in sight or signal distance at the time of the capture.

I transmit all of the papers and writing found on board of her in care of Acting Ensign A. L. Emerson, the officer in charge of the steamer.

I have transferred to the frigate Colorado twenty-three persons, passengers and crew, and sent the captain and chief engineer to New Orleans, in the steamer.

I am, very respectfully, your ob't servant,

W. P. McCANN, *Lieut. Commander.*

Hon. Judge DURELL,
U. S. Dist. Court, New Orleans.

44 *Bill of provisions, filed March 8th, '64.*

U. S. prize st'r Grey Jacket to tugboat Alert, Dr..... $17 50
Approved.

A. L. EMERSON, *Prize Master.*

Bill of C. Newberry, engineer, filed March 8th, 1864.

Steamer Grey Jacket to C. Newberry, Dr., to services as engineer from Dec'r 31, '63 to Feb'y 24, '64..... $175 00
Approved.

A. L. EMERSON, *Prize Master.*

New Orleans, Feb'y 26, 1864.

Claim and answer of Timothy Meaher, filed 21 March, '64.

45 U. S. dist. court, E. D. of Louisiana.

THE UNITED STATES OF AMERICA
vs.
THE STEAMER GREY JACKET, TACKLE AND CARGO. } No. 7,820. In admiralty.

The answer of Timothy Meaher, owner and claimant of the steamer Grey Jacket and her cargo, to the libel of the United States of America against the said steamer and cargo.

And now comes the said Timothy Meaher, a loyal citizen of the United States, born in the State of Maine, late of the city of Mobile, State of Alabama, owner of the steamer Grey Jacket and of the goods, wares, and merchandize laden thereon, and for answer to the libel of the United States of America, against the said steamer and cargo, doth allege and articulately propound as follows, to wit:

First. That he, the said Timothy Meaher, is the true and bona fide owner of the said steamer Grey Jacket, and of the goods, wares, and mer-
46 chandize thereon, and that no person is the owner thereof, and that he is ready and willing to file a stipulation with sureties in such sum as the court will direct, for the payment of all costs and expenses which may be awarded against him by the final decree of the court, or upon an appeal by the appellate court.

2d. That he admits that the said steamer or vessel called the Grey Jacket, with the goods, wares, and merchandise laden thereon, was taken possession of on or about the 31st day of Dec'r, 1863, and was brought to Pass a l'Outre, within the jurisdiction of the court, by the United States gunboat Kennebec, W. P. McCann, U. S. navy, commanding, as is alleged and propounded in the first article of the said libel; but he expressly denies that by the said taking possession of the said steamer Grey Jacket and her cargo, the said steamer Grey Jacket and cargo were captured, or that they
47 became lawful prize as is in the said article propounded and alleged.

3d. That he specially denies that the said steamer or vessel called the Grey Jacket, with the goods, wares, and merchandise laden thereon were at the time they were taken possession of by the said gunboat Kennebec, rightfully subject to capture; and that he further specially denies that they were then or are now lawful prize, as is alleged and propounded in the second article of the said libel. Wherefore he avers that the said steamer and cargo ought not to be condemned and forfeited to the libellants as therein demanded.

And the said defendant now and at all times hereafter reserving to himself all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said libel contained, for further answer thereunto, says that he, the said Timothy
48 Meaher, was living in the city of Mobile, State of Alabama, at the time the existing rebellion broke out, and that he had resided in the said city of Mobile for upwards of thirty years prior thereto That after the breaking out of the said rebellion defendant gave no aid or assistance to the same; that he had previously by a life of industry and economy and the prosecution of legitimate business enterprises, acquired a large amount of property; that after the breaking out of the said rebellion he became anxious to adopt some measure by which he might be able to withdraw the property he was thus in possession of from the so-called Confederate States to a place of security; that with that object and intention defendant built the said steamer Grey Jacket with his own means, and that he loaded her with the goods, wares, and merchandise constituting her cargo, and then procured a clearance from the so-called Confederate authorities, exer-
49 cising all the powers of a government de facto in the said city of Mobile, State of Alabama, from the said port of Mobile to the port of Havana, in the island of Cuba, then and now a port of a country in amity with the United States, as the only means by which he, the said defendant, could be enabled to effect the withdrawal of his said property from the limits of the so-called Confederacy and beyond the power and control of the States in rebellion against the goverment of the United States of America.

And defendant, further answering, says that by accepting the clearance aforesaid for his said steamer and her cargo, from the said port of Mobile to the port of Havana, under the circumstances in which he was then placed, he neither did or could incur any penalty or forfeiture towards the United States. That the object he aimed at, the withdrawal of his property from the power and beyond the control of the States in rebellion, he
50 is informed and verily believes, was not inconsistent with his duties as a citizen of the United States. And he now avers the truth to be that his right of property in the said steamer and in her cargo, which was full and complete while the same were in the port of Mobile, continued to be full and complete after he had brought the same out of the said port and he had gotten upon the high seas with the intent and design of escaping from the power and control of the States in rebellion to a port in a country in amity with the United States, and that the said steamer and cargo were

not at any time after their escape from the said port of Mobile, rightfully subject to capture by the naval forces of the United States, and that the same are not lawful prize and liable to be condemned and forfeited to the libellants.

And respondent, further answering, says that the President of the United States, by a proclamation dated and given under his hand in the city
51 of Washington, the 8th day of December, A. D. 1863, declared and made known to all persons who had, directly or by implication, participated in the existing rebellion except as thereinafter excepted, that a full pardon is granted to them and each of them, with restoration of all rights of property except as to slaves and in property cases where rights of third parties shall have intervened, upon the condition that every such person shall take and subscribe an oath, as prescribed in the said proclamation, and shall thenceforward keep and maintain said oath inviolate.

And defendant, further answering, says that he is not embraced in the exceptions made by the said proclamation; that on the 18th day of March inst. he took and subscribed the said oath, as prescribed in said proclamation, which said oath was registered in the clerk's office of this honorable court, for permanent preservation. That in the premises a full pardon is extended to him, even if he had directly or by implication participated
52 in the existing rebellion, and that he therefore now expressly pleads the said pardon as a bar to any further proceedings in this cause.

Wherefore the defendant prays that this honorable court will be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

(Signed) MILES TAYLOR,
BUCHANAN & GILMORE,
SULLIVAN, BILLINGS & HUGHES,
Proctors for Respondent and Claimant.

Timothy Meaher, being duly sworn, says that all and singular the facts and allegations contained in the foregoing claim and answer are true.

(Signed) T. MEAHER.

Sworn to and subscribed before me this 21st day of March, 1864.

ALFRED SHAW, *Clerk.*

53 UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

To wit, personally appearing before me, the undersigned, United States commissioner for the eastern district of Louisiana aforesaid, Timothy Meaher as principal, and L. Sturtevant as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the United States in the full sum of two hundred and fifty dollars, lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, for the use of the said United States, and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators, firmly by these presents.

Whereas, in the matter of the United States *vs.* the st'r Grey Jacket and cargo, No. 7,820 of the docket of the dist. court of the United States for the eastern district of Louisiana, a claim has been filed on behalf of Timothy Meaher, this obligation to be null and void on condition that the said principal and surety shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court,

upon the final decree, whether it is rendered in the original or appellate court; otherwise, this obligation to remain in full force and virtue.

(Signed) T. MEAHER.
L. STURTEVANT.

Signed and sealed at the city of New Orleans this 21 day of March, 1864, in presence of—

K. LOEW, *Clerk to U. S. Commissioner in and for the eastern district of Louisiana.*

Bond filed 21 March, 1864.

54 *Order to open sealed papers.*

THE UNITED STATES
vs.
ST'R GREY JACKET AND CARGO. } 7,820.

On motion of A. M. Buchanan, esq., for claimant, ordered that the sealed papers on file be opened.

Extract from the minutes of 21 *March*, 1864.—*Order fixing cause for trial.*

THE UNITED STATES
vs.
ST'R GREY JACKET AND CARGO. } 7,820.

On motion of the dist. attorney, ordered that this cause be assigned for hearing on Tuesday, 5th inst., at 10 a. m., and that all parties interested be notified hereof.

Extract from the minutes of 2d April, '64.—Notices of trial.

55 United States district court, eastern district of Louisiana.

UNITED STATES
vs.
ST'R GREY JACKET AND CARGO. } No. 7,820.

To Rufus Waples, Sullivan, Billings & Hughes, Buchanan & Gilmore, and M. Taylor, esqs.:

You are hereby notified that the above cause has been assigned for trial on Tuesday, 5th inst., at 10 a. m.

By order of court.

K. LOEW, *D'y C'lk.*

New Orleans, April 2d, 1864.

Service.

Rec'd April 2d, 1864, and on the 4th of April, 1864, served copies of the within notice of trial on R. Waples, Sullivan, Buchanan, and Miles Taylor, esq'rs, all personally.

M. EGAN, *D'y Marshal.*

New Orleans, April 4th, 1864.

56 *Hearing of cause; order to strike out; motion for further proof; ruling reserved by the court.*

UNITED STATES
vs. } 7,820.
ST'R GREY JACKET AND CARGO.

This cause came on this day for trial—district attorney for libellant; Miles Taylor, Buchanan & Gilmore, and Sullivan, Billings & Hughes for claimant—and the pleadings having been read, on motion of the district attorney, and after hearing argument on behalf of the claimant in opposition to said motion, it is ordered by the court that so much of the claim and answer as is in the nature of an answer, be stricken from the record.

The dist. att'y thereupon offered in evidence the admiralty warrant, monition, and marshal's return, the testimony taken in preparatorio, the
57 report of the prize commissioners, and the papers found on board the captured vessel, marked A, B, C, D, E, F, G, H, I, and K.

The claimant offered in evidence the amnesty oath, marked L, and moved the court to grant an order for further proof, which motion was resisted by the dist. att'y. And after hearing argument for and against the order for further proof, the court reserved its decision upon the question, suggested that the claimant would furnish a certified copy of the record in the case of the U. S. *vs.* sch'r General C. C. Pinckney, lately decided by Mr. Justice Nelson, and ordered the cause to be continued indefinitely.

Extract from the minutes of 5th April, 1864.—Document A, offered in evidence by the United States April 5, '64.

Memo. of agreements made between Messrs. Meaher & Bro., owners of the st'r Grey Jacket, and Henry Myers, major and ch'f ord. officer, acting
58 for the gover't of the C. S.

The gover't will furnish the whole cargo of cotton, and will make over to the owners of the vessel one half of the cotton, in consideration of which the owners do agree to deliver the other half, belonging to the government, at Havana, free of further charge, except the one half of the expenses of compressing and storing incurred at Mobile.

It is understood and agreed that the said steamer is to return to Mobile, if practicable; if not, then to some other Confederate port; and the gover't is to be allowed at least one half of the carrying capacity of the steamer in the return voyage, at a freight of £25 per ton, and for any excess over the one half required by the gover't, at £30 per ton, payable in cotton, at the rate of 6*d.* per pound for middling, and other grades in proportion, on delivery of the freight.

It is further understood and agreed that in the event of a partial loss of the outward cargo, the portion of cotton saved is to be equally de-
59 vided between the parties at the port of destination, and any loss on the inward cargo is to be settled on the principle of general average, so far as the cargo is concerned.

Mobile, Oct. 22, '63.

HENRY MYERS,
Major and Ch'f Ord. Officer, Dep't of the Gulf.

Document B, offered in evidence by the U. S. April 5th, '64.

ORD. OFFICE, *Mobile, Dec. 24, '63.*

There being a difference of weight on the invoice of 250 bales, marked [M,] belonging to the owner of the st'r Grey Jacket, and the 250 b., marked [M,]

shipped by ord. dep't for acc't of the gover't, it is hereby understood that said owners have the privilege of putting on board 8 b. cotton for their acc't in addition to the 250 b. already shipped, in order to equalize said difference.

HENRY MYERS,
Major and Ch'f Ord. Officer, Dep't of the Gulf.

60 *Document C, offered in evidence by the United States Ap'l 5th, '64.*

MOBILE, *Nov.* 2*d*, 1863.

Messrs. M. A. Herrera & Co., Havana:

DEAR SIRS: The present will introduce to your acquaintance my neighbors, Messrs. Meaher Bros., of this place, a firm of large means and of the highest respectability, and in every way worthy of your confidence and best attentions.

Messrs. Meaher Bros. are about to dispatch their fine steamer to Havana with a cargo of cotton. I have said to them that their interests in your hands, should they decide to consign the business to you, would be most satisfactorily attended to.

Commending Messrs. Meaher & Bros. to your usual kind attentions, and with the hope that their acquaintance with you may result to your
61 mutual advantage, remain, yours truly,

JN. E. MURRELL.

Document D, offered in evidence by the United States April 5th, 1864.

MOBILE, *Dec.* 10, 1868.

MY DEAR BROTHER: This will be handed you by Capt. T. Meaher, whom you will recollect very well when you were in Mobile. If you can be of any service to the captain I shall be glad; there is none can give you more news of what we are doing or how we are getting along. The captain goes out in a vessel of his own building, which you ought to visit.

Any attention you can pay to the captain will be appreciated by your affect'n brother,

JOHN.

Address: Mr. Walter Douglas, Messrs. Brooks, Douglas & Co., 43 Calle de Cuba, Havana.

CAPT. T. MEAHER.

62 *Document E, offered in evidence by the United States April 5th*, 1864.

MOBILE, *Nov.* 3, 1863.

Messrs. J. H. Schroeder & Co., Liverpool:

DEAR SIRS: I beg to introduce to your acquaintance my neighbors, Messrs. Meaher Brothers, of this city, who are dispatching their fast running steamer ——— to Havana with a cargo of cotton. I have said to them that should they decide to reship the cargo to England, the consignment could not be entrusted, as is well known, to better hands than your own.

The large means and high standing of Messrs. Meaher & Bro. entitle them to your entire confidence and best attentions; and with the hope that this introduction may result to your mutual benefit and satisfaction, I remain, yours very truly,

JNO. E. MURRELL.

P. S.—I am happy to know that Messrs. Herrera & Co. are reship'g the cotton, per Fain, to you.

J. E. M.

63 *Document F, offered in evidence by the United States April 5th, '64.*

MOBILE, *Dec.* 12*th*, '63.

Walter Douglas, esq., care of Messrs. Brooks & Douglas, Havana:

DEAR SIR: Please deliver to Capt. Tim. Meaher, of the steamer Grey Jacket, the box which you advised me of as being in your possession directed to me.

I am, respectfully yours,

FRED'K JONES.

Document G, offered in evidence by the United States April 5th, 1864.

No. 103. DEPARTMENT OF THE GULF,
Provost Marshal General's Office, Mobile, Nov. 9, 1863.

Permission is hereby granted to John A. Soto to proceed to Havana, Cuba, upon oath not to communicate in writing or verbally, for publication or otherwise, any fact ascertained, which if known to the enemy might
64 be injurious to the Confederate States of America, subject to the discretion of the military authorities.

J. C. DENIS,
Major and Provost Marshal General.
B. C. F. QUINN.

Description: Eyes, grey; hair, dark; age, 25 years; height, 5 ft. 5 in.; complexion, dark.

H'DQ'RS DEP'T OF THE GULF,
Mobile, Nov. 9, '63.

Approved by Com'd'g Gen'l Maury.

GEO. G. GAINES, *Chief of Staff.*

Oath.

I, John A. Soto, do solemnly swear or affirm that I will bear true faith and yield obedience to the Confederate States of America, &c., and that I will serve them honestly and faithfully against their enemies.

JNO. A. SOTO.

Mobile, 9th Nov., 1863.

FRANK'N BUCHANAN,
Admiral, &c.

Nov. 9th.

65 *Document H, offered in evidence by the U. S. April 5th, 1864.*

Don Alfonso Peres, vice-consul en cargado del consulado de Espana en Mobila:

Concedo libra y seguro pasaporte a Mr. John O'Hara, natural de E. C., profesion com estado casado la Habana donde debera presentar esta para su refendacion. Y en cargo en nombre de S. M., (Q. D. G.) a las autoridades competentes no le pongan impedimiento alguno en su riaje, sin fundado motiro.

Dado en Mobila a 12 de D'bre. de mil ochocientes sesenta y tres.

[SEAL.] ALONSO PERES.

No. 31. Filacion: Egad, 36 anos; estatura, regular; pelo, ——; ojod, ——; barba, ——; cara, ——; color, ——; senas particulares. Firma del portador.

66 *Doc't I, offered in evidence by the United States April 5th*, 1864.

Don Alonzo Peres, vice consul en cargado del consulado de Espana en Mobila:

Concedo libre y segura pasaporte a Luis Bego, natural de Galicia, profesion dependiente estado Soltero para que pas a la Habana, donde debera presentar esta para su refrendaeun y en cargo en nombre de S. M. (Q. D. G.) a los autoridades competentes no le pongan impedimento alguno en su riaje, sinfundado motiro.

Dado en Mobila, a 4 de Nov'bre, de mil ochocientes sesenta y tres.

[SEAL.] ALONSO PERES.

Filacion: Edad, 47 anos; estatura, regular; pelo, castano; ojos, ——; barba, ——; cara, ——; color, ——; senas particulares. Firma del portador.

67 *Doc't K, offered in evidence by the United States Ap'l 5th*, 1864.

Don Alonzo Peres, vice consul en cargado del consulado de Espana en Mobila:

Concedo libre y segura pasaporte a John Sota, natural de E. C. profesion droguista estado solto para que pase a la Habana, donde debera presentar esta para su refrendacion y encargo en nombre de S. M. (Q. D. G.) a los autoridades competentes no le pongan impedimento alguno en su riaje sinfundado motiro.

Dado en Mobila, a 1er de D'bre, de mil occhoientes sesenta y tres.

[SEAL.] ALONSO PEREZ.

No. 32. Filacion: Egad, 30 anos; estatura, ——; pelo, ——; ojos, ——; barba, ——; cara, ——; color, ——; senas particulares. Firma del portador.

68 *Document L.—Amnesty oath offered in evidence by claimant April 5*, 1864.

CLERK'S OFFICE U. S. DISTRICT COURT, EASTERN DIS'T OF LOUISIANA,
New Orleans, March 18th, 1864.

This is to certify that Timothy Meaher did on the 18 March, 1864, take and subscribe the oath prescribed by the President's proclamation of December 8th, 1863, and that the same is registered in this office for permanent preservation, bearing the number 107.

(Sig.) K. LOEW, *D'y C'lk.* [SEAL.]

Motion for a rehearing on order to strike out.

UNITED STATES
vs.
ST'R GREY JACKET AND CARGO. } 7,820.

69 Miles Taylor, A. M. Buchanan, and Sullivan, Billings & Hughes, of counsel for Timothy Meaher, the claimant in this cause, now move the court that they may be reheard upon the motion made by the dis't att'y of the United States on behalf of the libellants, on the 5th day of April, 1864, to strike out the answer heretofore filed therein by him, the said claimant.

The court thereupon order that the hearing of the motion be assigned on Friday, the 29th inst., at 10 a. m.

Extract from the minutes of 26 *Ap'l*, '64.—*Hearing and submission.*

U. S.
vs. } 7,820.
St'r Grey Jacket and cargo

The motion made by claimant on 26th instant was this day called up—Miles Taylor, A. M. Buchanan, and Sullivan, Billings & Hughes, for mo-
70 tioner, district att'y for libellant—when, after hearing argument, the court took time to advise.

Extract from the minutes of 29 *Ap'l*, '64.—*Order overruling motion.*

U. S.
vs. } 7,820.
St'r Grey Jacket and cargo.

For the reasons orally assigned by the court it is ordered that the motion made by the claimant on 26th ulto., be overruled, but that leave be granted him to file an affidavit.

Extract from the minutes of 2d *May*, '64.—*Harbor master's bill filed* 31 *May*, 1864.

New Orleans, *May* 30, 1864.

Steamer Grey Jacket, to board of harbor masters and master and wardens, Dr.

To harbor masters' dues on 370 tons, at 2 cts. per ton	$7 40
Entrance fee	5 00
	12 40

Rec'd payment.

71 *Judgment.*

United States
vs. } No. 7,820.
St'r Grey Jacket and cargo.

For the reasons now orally assigned by the court, and which will be reduced to writing hereafter, it is ordered, adjudged, and decreed that further proof be refused; that the steamer Grey Jacket, her tackle, apparel, and cargo, be, and the same are hereby, condemned as lawful prize of war; that after ten days' advertisement they be sold by the marshal, and the proceeds thereof deposited in the 1st National Bank of New Orleans, and there held subject to the further order of court, reserving for further action the question of how many and what public vessels are entitled to share in the prize and the relative force of the vessels; and to that end the prize com-
72 missioners shall take the evidence of the necessary witnesses.

Extract from the minutes of 10*th August*, 1864.—*Rule to set aside and cancel judgment.*

United States
vs. } 7,820.
St'r Grey Jacket and cargo.

On motion of Sullivan, Billings & Hughes, Buchanan & Gilmore, C. T. Estlin, and M. Taylor, of counsel for the claimant, and in suggesting to the court that the said cause was on the 5th day of April, 1864, by order of the court, continued indefinitely, and that no further proceedings could have been rightfully had therein until the same had been again assigned and set down to

be proceeded in on a certain day after due notice to claimant; and that in consequence thereof the proceedings had since the said continuance
73 were irregularly had through inadvertance and a misapprehension of the position of the said cause.

It is therefore ordered that the libellants through the dis't att'y be cited to show cause on Tuesday, 23d inst., at 10 a. m., why the sentence or decree rendered therein on the 10th instant should not be rescinded and set aside, inasmuch as the same was irregularly rendered through a misapprehension as to the position of the said cause, and why the said cause should not be hereafter proceeded on according to law as though no such sentence or decree had been rendered.

Extract from the minutes of 18 *Aug.*, '64.—*Service.*

Rec'd Aug. 20th, 1864, and on the same day, month, and year served a copy of the within rule on act'g dis't att'y for the U. S., C. S. Kellogg, esq., in person.

Rec'd August 20, 1864.

M. EGAN, *D'y U. S. Marshal.*

UNITED STATES
74 *vs.* } No. 7,820.
ST'R GREY JACKET AND CARGO.

The rule herein taken by the claimant on 18th inst. came up for trial—Sullivan, Billings & Hughes, Buchanan & Gilmore, Ch's T. Estlin, and Miles Taylor, esq's, for pl'ff in rule; C. S. Kellogg, esq., dis't att'y for def'ts in rule—when, after hearing counsel, it is ordered that the rule be made absolute; that the sentence or decree herein rendered on 10th instant be rescinded and annulled, and that the cause be reinstated and tried as though no such sentence or decree had been rendered.

Extract from the minutes of 23 *Aug.*, '64.—*Order cause fixed Aug.* 26, '64.

UNITED STATES
vs. } 7,820.
ST'R GREY JACKET AND CARGO.

75 On motion of Miles Taylor, esq., proctor for claimant, ordered that the question of further proof pending in this cause be fixed for argument on Monday, the 29 inst., at 10 a. m., and that the dis't att'y be notified hereof.

Extract from the minutes of 26 *Aug.*, '64.—*Service.*

Rec'd August 27th, 1864, and on the same day, month, and year served a copy of the within rule or order on C. S. Kellogg, esq., U. S. dis't att'y, in person.

Aug. 27, '64.

M. EGAN, *D'y U. S. Marshal.*

Hearing and submission, Aug. 29, '64.

UNITED STATES
vs. } 7,820.
ST'R GREY JACKET AND CARGO.

This cause came up before the court on the question for further proof—

76 dis't att'y for libellants, Miles Taylor and C. T. Estlin, esq'rs, for claimant—when, after hearing argument, the court took time to advise.

Affidavit filed Aug. 29th, '64, *nunc pro tunc*, as of date of 25th May, 1864.

Admiralty prize court, U. S. D. court, E. D. of Louisiana.

THE UNITED STATES OF AMERICA
vs.
THE STEAMER GREY JACKET, HER TACKLE AND CARGO.

Appeared personally Timothy Meaher, now of the city of New Orleans, in the State of Louisiana, and made oath that he is a loyal citizen of the United States, born in the State of Maine; that he was late of the city of Mobile, in the State of Alabama, and that he is the true, lawful, and
77 sole owner and proprietor of the said steamer Grey Jacket, and of the cotton and goods, wares and merchandise, consisting her cargo at the time of her capture on the 31st day of December, 1863, by the U. S. gunboat Kennebec, W. P. McCann, U. S. N., commanding; that he, the said Timothy Meaher, was living in the city of Mobile, in the State of Alabama, at the time the existng rebellion broke out, and that he had resided in the said city of Mobile upwards of thirty years prior thereto; that during the period which preceded the breaking out of the rebellion he opposed secession and did all in his power to prevent the same, and to preserve and maintain the Union; and that after the said rebellion broke out he gave it no aid or assistance in any way whatever.

And he further says that he had previously to the breaking out of the said rebellion, by a life of industry and economy and the prosecution of
78 legitimate business enterprises, acquired a large amount of property; that after the breaking out of the said rebellion he was anxious to adopt some course by which he might be enabled to withdraw the property he was in possession of, or as considerable a portion of it as was practicable, from the so-called Confederate States, to a place of security, and get it into such a position that he might realize the value of it and return to the State of Maine, where his mother now lives and where he has property and many relations and friends; that with this object and intention, as well known to several of his confidential friends, he built the said steamer Grey Jacket with his own means, with the design of lading her with cotton belonging to himself; that while he was engaged in building said steamer, and she was approaching completion, the Confederate authorities at Mobile manifested a determination to make use of the steamer to advance their
79 own purposes, and proposed to load her with cotton furnished by them and to give him one half of the cargo as the owner of the steamer, on condition that the other half was landed at Havana, free of charge for freight, and that he would bind himself to return to Mobile or to some other Confederate port, and give to the so-called Confederate government a certain portion of the carrying capacity of the said steamer on certain terms and conditions; that situated as he was, with his property and himself and his family in the power and under the control of the rebel authorities, he had no freedom of action and could only by his manner manifest his repugnance to any proposal without venturing on an absolute refusal to it; that he did manifest great dissatisfaction to the proposed arrangement, and that no such contract was entered into by him with the rebel authorities, and that no such arrangement by them with him was carried into effect, either
80 wholly or in part; that although the *the* said rebel authorities had seemed to abandon the attempt of carrying out the said proposal, not having found any cotton to be laded aboard of the said steamer, yet he found

that when he was ready to begin to lade his own cotton aboard of her that the said rebel authorities had not abandoned all idea of deriving an advantage from exercising a forced control over his property.

That an officer exercising authority at Mobile visited him and said that he, Meaher, could not take the cargo out unless he consented that one half of the cargo to be put on board of the steamer should be for the account of the so-called Confederate government, and that if he, Meaher, did not comply, he, the officer, would take possession of the steamer and put a government crew on board of her; that he, Meaher, finding that it was impossible for him to have any control over his property if he refused to comply with the requisition on the part of one armed with physical
81 power to despoil him altogether, apparently submitted to and complied with the requisition with the secret determination to assert and maintain his real rights over the entire cargo so soon as he had escaped beyond the authority and control of the rebel States; that all the cotton laden on said steamer at the time of beginning her voyage, and found on board of her at the time of her capture, was his own property and had been produced on his own plantation, or had been bought and paid for by him, with a view to its being laded on board of said steamer for transportation to Havana on the contemplated voyage, on his own account, and that before he obtained a clearance of the said steamer Grey Jacket and her cargo, he was required to pay and did pay the export duty imposed on all cotton exported, by authority of an act of the Congress of the so-called Confederacy, upon the entire amount of cargo embarked on the said steamer.

82 And he further says that neither the so-called Confederate States, or any person or persons in rebellion against the United States, or their factors, or agents, or any others had at the time of the shipment of the said cotton on the said steamer Grey Jacket, or at the time of the capture of the said steamer, on the 31st day of Dec'r, 1863, or now have any right, title, or interest in the said cotton or in the said steamer Grey Jacket.

And he further says that it was at first his intention to have taken his wife and children with him on board the said steamer on the said proposed voyage to Havana, but that he was afterwards deterred from attempting to do so lest it should strengthen the suspicion which already existed against him in the minds of the rebel authorities and prevent his getting away at all, and that he at last unwillingly abandoned the idea and left them after having made an arrangement with his brother, J. M. Meaher, to send
83 them as soon afterwards as he could find a suitable opportunity to Havana, where they were to place themselves under the care of the commercial house of Santa Maria with whom he, Timothy Meaher, was to have made an arrangement.

And the said Timothy Meaher further says that after lading the said steamer Grey Jacket, as aforesaid, he procured a clearance from the so-called Confederate authorities, exercising all the powers of a government *de facto* in the said city of Mobile, in the State of Alabama, from the port of Mobile to the port of Havana, in the island of Cuba, then and now a port of a country in amity with the United States, as the only means by which he could be enabled to effect the withdrawal of his said steamer with its cargo from the limits of the so-called Confederacy and beyond the powers and control of the States in rebellion against the government of the United States.

84 And he further says that the President of the United States, by a proclamation, dated and given under his hand, in the city of Washington, the 8th day of Dec'r, 1863, declared and made known to all persons who had, directly or by implication, participated in the existing rebellion, except as thereinafter excepted, that a full pardon is granted to them and each of them, with restoration of all rights of property except as to slaves and in

property where rights of third parties shall have intervened, upon the condition that every such person shall take and subscribe an oath as prescribed in the said proclamation and shall thenceforward keep and maintain said oath inviolate; that he, Timothy Meaher, is not embraced in any of the exceptions made in said proclamation, and that on the 18th day of March last he took and subscribed the said oath as prescribed in said proclama-
85 tion, which said oath was registered in the clerk's office for permanent preservation.

And he, Timothy Meaher, further says that the claim made by him in the above-entitled cause is a true and just claim, and that he shall be able to make due proof thereof as he, deponent, verily believes.

(Sig.) TIM. MEAHER.

Sworn to and subscribed before me this 25th day of May, A. D. 1864.

K. LOEW, *D'y Clk.*

Judgment.

UNITED STATES
vs.
ST'R GREY JACKET AND CARGO. } No. 7,820.

For the same reasons heretofore orally assigned by the court and which will be reduced to writing hereafter, it is ordered, adjudged, and de-
86 creed that further proof be refused; that the steamer Grey Jacket, her tackle, apparel, and cargo, be, and the same are hereby, condemned as lawful prize of war; that after ten days' advertisement they be sold by the marshal and the proceeds thereof be deposited in the 1st National Bank of New Orleans and there held subject to the further order of court, reserving for further action the question of how many and what public vessels are entitled to share in the prize and the relative force of the vessels, and to that end the prize commissioners shall take the evidence of the necessary witnesses.

Judgment rendered Sept. 6th, 1864.
Judgment signed Sept. 10th, 1864.

E. H. DURELL, *Judge.*

Upon the filing of a detailed statement, the costs and disbursements due Jas. Graham, late marshal, were this day taxed by the court at $719 90, as per entry on the minutes of Sept. 5th, 1864.

87 *Petition of appeal, filed Sept. 10th, 1864.*

U. S. D. court, E. D. of La.

THE UNITED STATES, libellant,
vs.
THE ST'R. GREY JACKET, HER TACKLE, APPAREL, AND cargo, Timothy Meaher claimant. } Admiralty prize court.

To the honorable the United States district court in and for the east dist. of Louisiana :

The petition of Timothy Meaher, a loyal citizen of the United States, the above-named claimant, respectfully represents that a final sentence or decree was rendered on the 6th day of Sept., 1864, in the above-entitled cause, refusing further proof therein and condemning the said steamer Grey Jacket and her cargo; that petitioner is aggrieved by the said final sentence
88 or decree, which he believes to be erroneous; that the matter in controversy exceeds in value the sum of $2,000, and that he is informed

that in the premises he is entitled to have an appeal allowed him in the said cause to the Supreme Court of the United States, and to have the said appeal operate as a supersedeas on giving good and sufficient security in such sum as may be fixed by the court.

Wherefore your petitioner prays that he may be allowed an appeal from the said final sentence or decree to the Supreme Court of the United States; that the said appeal shall operate as a supersedeas and stay the execution of the said sentence or decree on his giving security, according to law, in the sum fixed by the court; that a transcript of the record and of all the proceedings in the cause, duly authenticated, may be sent up to the said Supreme Court, and that the libellant may be duly cited to appear before the appellate court.

(Sig.) SULLIVAN, BILLINGS & HUGHES,
BUCHANAN & GILMORE,
89 MILES TAYLOR,
Proctors for Petitioner.

Order.

An appeal is allowed in this case, returnable in the Supreme Court of the United States on the 1st Monday of December next, the appellant giving bond for costs in the sum of four hundred dollars, with good and solvent security conditioned as the law directs, the said appeal not to operate as a supersedeas except so far as the distribution of the proceeds is concerned.

Sept. 10th, 1864.

(Sig.) E. H. DURELL, *Judge.*

Writ of venditioni exponas issued 10th Sept., 1864, not yet returnable at the date of the certificate to this transcript.

90 *Citation of appeal.*

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
ST'R GREY JACKET AND CARGO. } No. 7,820.

The United States of America to the United States, libellants, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at its next term, to be holden in the city of Washington, D. C., on the 1st Monday of December next, to answer the appeal taken by the claimant in this cause, and that you show cause then and there, if any there be, why the judgment rendered against the said claimant on 10th Sept., 1864, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. H. Durell, judge, this 12th day of Sept'r, in the year of our Lord 1864, and the 89th of the American independence.

E. H. DURELL, *Judge.*

91 Received Sept. 12th, 1864, and in obedience served a copy of the within citation of appeal on Rufus Waples, esq., United States district attorney, at his office, No. 18 Royal street, New Orleans. Service made personally on the same 12th day of Sept., 1864.

M. EGAN, *D'y U. S. Marshal.*

New Orleans, Sept. 13th, 1864.

92 *Citation of appeal.*

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
ST'R GREY JACKET AND CARGO. } No. 7,820.

The United States of America to W. P. McCann, lieut. com'd'g, and the other officers and crew of the U. S. gunboat Kennebec, captors, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at its next term, to be holden in the city of Washington, D. C., on the 1st Monday of December next, to answer the appeal taken by the claimant in this cause, and that you show cause then and there, if any there be, why the judgment rendered against the said claimant on 10th Sept., 1864, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. H. Durell, judge, this 12th day of September, in the year of our Lord, 1864, and the 89th of the American independence.

E. H. DURELL, *Judge.*

93 Received Sept'r 12th, 1864, and on the 13th day of the same month and year, the steamer Kennebec and officers being absent from the State, served a copy of the within citation of appeal on J. V. Palmer, commodore of the fleet, in person, at his office, No. 148 Canal street, cityof New Orleans.

M. EGAN, *D'y U. S. Marshal.*

New Orleans, Sept. 13th, 1864.

94 *Appeal bond.*

District court of the United States, in admiralty.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

UNITED STATES
vs.
ST'R GREY JACKET AND CARGO. } No. 7,820.

Know all men by these presents that we, Timothy Meaher as principal, and D. C. McCann as surety, are held and firmly bound unto the United States in the sum of four hundred dollars, to be paid to the said United States, for the payment of which, well and truly to be made in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at New Orleans, the 13th day of Sept'r, 1864.

Whereas the above-named Timothy Meaher, owner of st'r Grey Jacket and cargo, has appealed to the next term of the Supreme Court of the United States from a final judgment of the district court of the United States for said district, rendered against the steamer Grey Jacket and cargo on the 10th Sept., 1864, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs and satisfy whatever judgment may be rendered against

him if he fails to make his appeal good, then this obligation to be void; otherwise, the same shall be and remain in full force and effect.

(Sig.) TIM. MEAHER.
" D. C. McCANN.

Signed, sealed, and delivered in presence of—
K. LOEW, *D'y Cl'k.*
[50-cent stamp.]

95 United States district court, eastern district of Louisiana.

I, Kilian Loew, deputy clerk of said court, do certify that the foregoing 94 pages contain and form a true, correct, and complete transcript of the original record and of all the proceedings had, documents filed, and evidence adduced at the trial of the case of the United States vs. the steamer Grey Jacket and cargo, No. 7,820 of the docket.

In testimony whereof, I grant these presents under my hand and the seal of our court, at New Orleans, this 17th day of September, A. D. 1864, and the 89th year of the American independence.

[SEAL.] K. LOEW, *D'y Cl'k.*

Filed 18 October, 1864.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

THE STEAMER GREY JACKET and CARGO, Timothy Meaher, claimant and appellant,

vs.

THE UNITED STATES.

No. 84.

PROCEEDINGS IN THE DISTRICT COURT.

This vessel, a steamer of 400 tons burden, and her cargo, consisting of about 513 bales of cotton, 25 barrels of rosin, some turpentine and tobacco, were captured *on the high seas*, between forty and sixty miles south of Mobile bay, and beyond the limits of blockade of that port, on the morning of December 31, 1863, by the U. S. steamer Kennebec, one of the blockading vessels. The Grey Jacket had run out of Mobile bay on the previous night, under cover of the darkness; but, being perceived, was pursued and captured on the next morning for breach of blockade by the U. S. vessel.—(Rec., p. 8, answ. of Flynn, the mate, to 24th int.; also; Rec., p. 11.)

The vessel and cargo, in charge of a prize master, were sent to New Orleans for adjudication, and duly reported to the district judge there as a case of maritime prize.—(Rec., p. 4.)

On February 26, 1864, vessel and cargo were libelled as prize of war, when the papers found on

board of the captured steamer were delivered to the prize commissioners, and the depositions, *in preparatorio*, of the captain, mate, and engineer duly taken on the standing interrogatories.—(Rec., pp. 2, 3.)

On March 21, 1864, Timothy Meaher, master of the captured vessel, intervened, and claimed the vessel and cargo *as sole owner*, embracing in his claim certain allegations in the nature of an answer to the prize libel of the United States.—(Rec., p. 12, *et seq.*) These allegations were afterwards, on motion of the district attorney, stricken from the record.—(Rec., p. 16.) But the claimant was subsequently given leave to file an affidavit, (Rec., p. 20,) which he accordingly did on August 29, 1864.—(Rec., p. 22.)

The cause having been heard on the preparatory proofs and papers, the claimants moved for leave to introduce further proof; which motion the court overruled, and condemned vessel and cargo as lawful prize of war.—(Rec. p. 24.) An appeal was then taken to this court.

GROUNDS OF CONDEMNATION, AND REFUSAL TO ALLOW FURTHER PROOF.

First.

If the court below correctly refused to allow the claimant the benefit of further proof, it must be conceded that there was no error in the decree of condemnation.

1. *Vessel and cargo were fully shown by the proofs in preparatorio to be enemies' property, and this,*

(*a*) Whether the court believe, as to the question

of ownership, the testimony of the master and claimant, who swears that he is a citizen of the State of Alabama, "*to which*" (he adds) "*I owe my allegiance;*" that he was, personally and commercially, domiciled at Mobile at the time of the capture, for thirty years previous; and was *sole owner* of the vessel and cargo.—(Rec. p. 5.) Or,

(*b*) Whether the court believe the testimony of the other examinants, and the contents of all the papers found on board of the prize, which concur in affirming the ownership of this vessel, and one-half of the cargo, by a house of trade, of which the claimant was partner, established in the hostile country; and as to the residue of the cotton constituting the cargo, that it was *the property of the rebel government*, proceeding to Havana on the account of that organization.

(Depositions of Flynn, the mate, and Newberry, the engineer; Rec. pp. 8, 10.)

(Letter to Herrera & Co., Havana, dated Mobile, Nov. 2, 1863; Rec. p. 17.)

(Documents "A" and "B," being agreements between Meaher & Bro. and the "Confederate States," touching the shipment of this cargo on account of the latter.—Rec. p. 16.)

2. *The vessel and cargo were also, upon the proofs in preparatorio, unquestionably liable to condemnation for breach of blockade.*

In his deposition taken *in preparatorio*, Meaher, claimant, swears: "The vessel was bound to Havana.

The voyage began in Mobile, and was to have ended at Havana. The steamer Grey Jacket came out of Mobile, and had gone 60 miles on her voyage to Havana when captured. She was steering her course direct for Havana when captured. In case we had arrived at our destined port, I should have reshipped the cargo to some port where I could have received a better price for it than I could obtain there."—(Rec. pp. 5, 6.)

Flynn, the mate, examined *in preparatorio*, testifies: "The Grey Jacket was bound to Havana, on the voyage to which she was taken. It began at Mobile, and was to have ended at Havana. I know that the Grey Jacket, on the trip in which she was taken, had attempted to sail covertly and secretly from the port of Mobile under blockade. She could not have left otherwise than secretly."—(Rec., pp. 8, 9.)

Second.

The claimant was precluded, by the law of maritime war, from averring or proving, in a prize court, the facts on which he relied for restitution of the captured property; and the court below, therefore, rightly refused to allow those facts to be established by supplemtory proof. Because,

(*a*) A well settled doctrine of the law of war denounces, as being a trading with the enemy, the withdrawal by a citizen of this country of any property without license, from the enemies' territory after a considerable time has elapsed since the beginning of hostilities.—(Penniman's claim: The St. Lawrence, 9 Cranch, 121.) In that case, this court held that goods

purchased in England before hostilities, and shipped to the purchaser in this country by his agent, eleven months after the declaration of war, were confiscable in a prize court.

"To admit," said Mr. Justice Story, "a citizen to withdraw property from an enemy's country a long time after the war, under pretence of its having been purchased before the war, would lead to the most injurious consequences, and hold out strong temptations to every species of fraudulent and illegal traffic with the enemy. The present shipment was not made until more than eleven months had elapsed after war was declared; and we are all of opinion that it was then too late for the party to make the shipment so as to exempt him from the penalty attached to an illegal traffic with the enemy."—(See also in the same case the even more stringent language of the court respecting the claim of McGregor, who, like the claimant in this case, but unlike Penniman, was personally and commercially domiciled in the enemy's country.)

So that even if it could be held that this claimant had at the time of capture wholly divested himself of the hostile character, he was guilty, and subject to the penalties of illegal trade with the enemy, in shipping commercial property from the hostile territory more than two years after hostilities had been on foot—property, too, which *he had acquired during the war*, for the express purpose, as alleged, of engaging in the present unlawful venture, he having built the Grey Jacket at Mobile, in the third year of the war.

2. Independently, therefore, of the law of blockade,

the proof proposed to be adduced by the claimant was inadmissible, and rightly rejected by the district court. But when it is observed that the voyage in question was not capable of being prosecuted under any circumstances without breach of the blockade, the effect of such proof as the claimant offered to adduce could only have been to involve him in the accumulated consequences of a two-fold guilt.

3. But there are still other reasons why this was, and is, not a case for further proof on the part of the claimant.

(a) His affidavit, filed in aid of this application, cautiously avoids any allusion whatever to his personal intention as to returning to Alabama at the time of his departure on board this vessel. Stress is laid only on the asserted purpose of removing this property "*to a place of security*, beyond the power and control of the States in rebellion." An intention on the part of the claimant to return to his residence and business in Mobile is perfectly consistent with the truth of the contents of this affidavit. Moreover, there are no facts alleged in that document tending to show any dissolution of the claimant's commercial establishment and domicile in Mobile prior to or at the time of his sailing on this voyage, or any suspension of the mercantile pursuits in which he had been engaged during the entire period of war. The preparatory proofs and papers show, what is carefully concealed in this affidavit, that the claimant was a member of a house of trade in Mobile, largely engaged in the enemy's commerce; and, independently of personal residence, a continued

connection with such a house would have operated in law to prevent any divestment of that enemy quality impressed upon the claimant by residence and commerce during the war in Alabama.

Further, on the point of the contents of this preliminary affidavit, it will be observed that the claimant alleges that as much of this cotton as had not been bought and paid for by him, "with a view to its transportation to Havana," "*had been produced on his own plantation.*"—(Rec., p. 23.) Now, no doctrine is better settled than that the produce of a person's own plantation in the enemy's country is considered, in a prize court, as the property of the enemy, independent of his own personal residence and occupation.—(9 Cranch, 196.) The claimant, if the owner at the time of the capture, of the soil on which this cotton was grown, was an enemy, aside from any other fact or facts incorporating him with the permanent interests of the southern country; and the cotton in question was *enemy's property*, independently altogether of the general commercial or political character of the claimant in respect to other interests and transactions.

(b) The present claim was subject to be rejected by the court below *in limine*, on the ground that the ownership therein asserted was in direct opposition to all the papers and preparatory examinations.—(5 Robt. 15, 19; 6 Robt. 1; 1 Gall., 288; 2 Gall., 97.) The assertion that the claimant was the sole and exclusive owner of this vessel and cargo, is contradicted by every witness and every paper in the case. All the examinants, save the claimant, testify specifically that

the brothers, J. M. and T. Meaher, owned the vessel, and that the half of the cargo was their property; the residue being the property of the Confederate government.—(Deposition of Flynn, the mate, Rec. p. 8; of Newbury, engineer, Rec. pp. 10, 11.) The letters and the documents "A" and "B," found on board, corroborate these witnesses in every particular.

These proofs and papers show affirmatively, 1st: that at least a half of this cargo was owned by the rebel government; and 2d: as to the rest, if not owned by that organization, that it was the property of a firm, of which this claimant was but one member, domiciled and trading in Mobile; thus negativing the allegation of exclusive ownership of the claimant, and entitling the court, under the principle referred to, to reject summarily his claim for restitution.

(c) But, in addition to all this, the claimant had justly forfeited any right to adduce further proof, by the concealment and suppression, in his original claim, of the connection of the rebel authorities with the shipment of this cargo.—(1 Rob. 126; 2 Rob. 10.) And moreover, by the difficulties which would surround necessarily any attempt on his part to explain satisfactorily the contents of the two extraordinary documents "A" and "B," (Rec. p. 16,) upon the theory of an absence of all interest or proprietorship in the voyage and cargo of the hostile government.—(1 Rob. 164.) The presence and contents of these documents, to use the language of Lord Stowell, "are out of the reach of any rational solution," except upon one theory of the case. *Their effect is, to establish an ownership in that government in at least half*

of the cargo. The first document, entitled a "*Memo. of agreements between Messrs. Meaher & Bro. and Henry Meyers, Major, etc., acting for the government of the C. S.,*" would import a proprietorship in the *whole cargo* in the "Confederate States," to be determined as to one-half of the shipment, on the due performance of the agreement on the part of Meaher and Brother. But whatever be the true purport and effect of that agreement, it is clear that that document "B," executed by the agent of the rebel government a few days before the capture, (December 24, 1863,) avouches, in most authentic form, the ownership of one-half, at least, of this cargo, at the time of shipment, by the rebel confederacy.

And yet, in the original claim and answer, (which went at large into the merits of the case,) there is not the faintest allusion to any connection whatever, on the part of the rebel government, with the cargo and voyage. It was not till the discovery of the documents referred to, that the claimant, in his affidavit of August 29, 1864, (Rec., p. 22, *et seq.*,) attempted to explain the presence of such papers on board his vessel, and to reconcile their contents with the theory of his original claim. But can the court believe that any attempt to account for the contents of those documents upon any theory of the exclusive interests of the claimant, or even of his firm, in this cargo, could be successfully made? Do these papers not show, beyond any rational doubt, that the asserted exclusive ownership of this cargo by the claimant is without color of probability? They speak for themselves, and

need no commentary. They are the title papers of the rebel government. Against such proof *in preparatorio* as they furnish of Confederate ownership, no British or American court could, with propriety, permit extraneous evidence to be adduced; especially by a claimant who has shown himself, as this party has done, unfit to be trusted with the benefit of any doubt. —(The Euphrates, 8 Cranch, 335.)

Third.

We submit, therefore, on the whole case, as presented by the record:

1st. That according to the preparatory proofs, this vessel and cargo, whether exclusively owned by the claimant, or jointly by him and his partners in trade, were the property of persons within the legal designation of enemies and were, therefore, capturable and confiscable as enemies' property.

2d. That, according to those proofs, both vessel and cargo were liable to capture and condemnation for breach of blockade.

3d. That if the hostile character of the claimant had been determined before the capture, and this voyage was undertaken for the purpose, and with the intent declared in his claim, the property was confiscable, independently of the question of blockade, for illicit trading with the enemy.

4th. That the contents of the affidavit, filed in aid of the application for further proof, do not show that there was, at the time of capture, any determination of the commercial or personal domicile of the claimant in the enemies' country; nor that he was not, at that

time, the owner of the plantation on which, as it is alleged, a portion of this cargo was grown.

5th. That all the proofs and papers in the cause are in direct and irreconcilable conflict with the allegation of the exclusive ownership of the claimant in the vessel and cargo; and his claim, on that ground, was properly rejected by the court below.

6th. That the fraudulent concealment and suppression at the outset of the cause of the transactions between the claimant and rebel government at the port of shipment, precluded him, by well established principle and practice, from offering explanation of those transactions by further proof.

7th. That such proof was, and is, inadmissible, on the further ground that the original evidence in the cause fully and satisfactorily establishes the interest of the rebel confederacy in at least a half of the cargo, and that on a point not attended with doubt, under the original evidence, suppletory proof is never suffered to be adduced in a prize court.

On these grounds we submit, that there was no error in the decree of condemnation as passed by the district court, and its sentence should accordingly be affirmed.

MOTION TO FILE AN ADDITIONAL ANSWER.

The paper now exhibited to this court, and which the claimant now moves this court for leave to file, as "an additional answer" in this cause, consists of two parts: *First*, certain allegations touching the ownership of vessel and cargo, and the destination of the same at the time of the capture; and *second*, a state-

ment to the effect that, subsequently to the decree of condemnation, and the present appeal therefrom, the Secretary of the Treasury, by warrant, under his hand and seal of office, remitted to the claimant all the right, claim, and demand of the United States to this forfeiture, "*so far*" as the same "*was incurred*" under the provisions of the act of July 13, 1861, but not otherwise.

The claimant insists that the allegations in this paper constitute sufficient grounds for reversal here of the decree of condemnation in the court below.

The counsel of the United States and naval captors contend on the contrary, that the paper if filed, can have no such effect, and that the motion for leave to file it should be overruled and denied, and in support of these positions they submit the following points:

First Point.

The contents of the first part of this so-called "answer," are in the nature and of the character of "further proof," and this claimant is not entitled under the law and practice of prize courts, as already shown, to adduce further proof in his behalf.

Second Point.

If the vessel and cargo were, in fact, in course of transit, at time of capture, from the State of Alabama to a loyal State, they were thus proceeding in violation of the prohibition then in force against commercial intercourse between the revolted States and the rest of the United States, and the plaintiff cannot be permitted to aver such violation of the municipal law of

the U. S. as ground for restitution of his property in a prize court.

Third Point.

The fact of the remission by the Secretary of the Treasury of the forfeiture of this vessel and cargo, "so far as the same was incurred under the provisions of the act of July 13, 1861," is a fact totally irresponsive and irrelevant to the present proceeding and issue; and this:

(a) Because the present condemnation and every part thereof accrued and were incurred under and by virtue of the public law of war, and not in whole or in part under and by virtue of the statute of July 13, 1861, and are therefore not only not touched nor affected by the warrant of remission now presented, but are by the terms of the warrant expressly excluded from its operation.

(b) Because even if this condemnation were not so excluded from the operation of the warrant of the Secretary of the Treasury, his power to remit forfeitures incurred by virtue of the statute of 1861, is limited by the words of the statute, to cases of seizure and proceedings to enforce forfeitures *under the statute*, and does not extend to, and cannot be exercised in, cases of maritime captures of vessels and cargoes under the law of war, adjudicated under that law and in the prize jurisdiction, and then condemned as prize of war, although such vessels and cargoes were or might be also, at the time of such capture, liable to seizure and to forfeiture under the statute in another form of procedure on the instance side of the court of admiralty.

(*c*) Because if the Secretary of the Treasury has power, by virtue of the statute of 1861, in the case of a vessel captured and then libelled and condemned in a prize court as a maritime prize, to remit the condemnation thereof so incurred and adjudged under the law of war, on account of *hostile ownership*, (which proposition is wholly denied,) still he has no power to remit, by the terms of the statute, such condemnation of such vessel incurred and adjudged under that law on account of *breach of blockade or unlawful trading with the enemy.*

(*d*) Because the jurisdiction of the Secretary of the Treasury under statute of 1861, to remit the forfeiture of property *other* than *vessels*, extends, in any case, only to merchandise taken *in transitu* between the revolted States and the rest of the United States; and the *cargo* captured on board of the "*Grey Jacket*" was *not* at the time of capture so *in transitu* between those sections, contrary to the 5th sec. of the statute.

(*e*) Because if the said *cargo* was thus proceeding, at the time of capture, and was liable to seizure and forfeiture under the 5th sec. of the statute of 1861, still the Secretary of the Treasury cannot, by any exercise of his power of remission, as limited by the terms of the statute, affect the condemnation of the said *cargo*, or its liability to condemnation in the prize court under the law of war, as enemies' property, or for breach of blockade, or for unlawful trading with the enemy.

Fourth Point.

But irrespective of all the considerations above stated, and as conclusive against the admissibility or operation in this cause of the paper now presented by the claimant, we maintain that in any case of vessel and cargo rightfully captured on the high seas, *jure belli*, by duly commissioned belligerent naval force, and liable and duly prosecuted to condemnation in a prize court, as good prize under the law of war, such capure, liability, and adjudication absorb and supersede any statutory forfeiture or liability to forfeiture of such vessel or cargo for violation of the municipal law; bar the allowance of any intervening claim to the property as so forfeited by statute, or as released from such forfeiture; and, under the law of the United States as it stood at the time of this capture, and as it now stands, control the disposition of the property so captured and condemned in prize, as against and above any such statutory forfeiture or any liability thereto, or any remission thereof.

The Rapid, 8 Cranch, 163–8.

The Sally, id., 384.

The steamer Nassau and cargo, Blatchford Prize Cases, 665–6.

Recent cases in this court of vessels captured and condemned as prize of war, though at the time of capture, and until so captured, plainly liable also to seizure and forfeiture under the statute of 13th July, 1861, as belonging in whole or in part to citizens or inhabitants of the insurrectionary States, and found at sea. Among these, the *Baigory* and *Andromeda*, 2

Wallace, 481–489, and the *Cornelius* and the *Bermuda*, 3 Wallace, 214 and 553.

Stat. of 1862, ch. 204, sec. 2; 12 stat. 606; and Stat. of 1864, ch. 174, secs. 10, 33, 34, and 35; 13 Statute, pp. 309, 315.

HENRY STANBERY,
J. HUBLEY ASHTON,
For United States.
C. EAMES,
Counsel for Captors.

Blatchford's Prize Cases 582

Supreme Court of the United States.

DECEMBER TERM, 1866.

The Steamer Gray Jacket and Cargo,

TIMOTHY MEAHER, CLAIMANT,

vs.

The United States.

No. 84.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF OF CLAIMANT.

BENJ. F. BUTLER,

FOR CLAIMANT.

Gibbs & Wyman, Printers & Stereotypers, Washington, D.C.

Supreme Court of the United States.

DECEMBER TERM 1866, No. 84.

STEAMER GREY JACKET AND CARGO, TIMOTHY MEAHER CLAIMANT, APPELLANT,

vs.

UNITED STATES.

CLAIMANT'S BRIEF.

Case Stated.

Steamer Grey Jacket and cargo were libelled on the 26th day of February, 1864, in district court of the eastern district of Louisiana, as being captured "*as lawful prize within the jurisdiction of the court,*" on the 31st of December, 1863. (Rec. p. 1.)

Evidence shows that she was captured on the high seas, about forty-one miles south of Mobile blockade, for "violating the rules of the blockade." (Prize Commissioners' Report, Rec., p. 3.)

TIMOTHY MEAHER made claim, March 21, 1864, setting up *the same claim and statement of fact in all substantial particulars, so far as he was permitted, that he now does.* (Rec., pp. 12, 13, 14.)

Testimony was taken *in preparatorio* of Meaher, captain; Flynn, mate; and Newberry, engineer.

This, with the documents found on board, and the report of the prize commissioners, the letters of the captors and prize master, (Rec., pp. 8, 11,) were offered in evidence by the district attorney. (Rec., p. 16.)

On motion of district attorney, all the claim in nature of an answer was stricken from the record. (p. 16.)

The claimant offered his oath of amnesty of March 18, 1864, in evidence, and moved the court to grant further proof, which motion was resisted by the district attorney. After hearing arguments for and against further proof, the court reserved its decision upon the question suggested, that *the claimant would furnish a certified copy of the record in The United States* vs. *Schooner C. C. Pinckney, lately decided by Mr. Justice Nelson, and ordered the cause continued indefinitely.*

On the 29th of April, 1864, a rehearing of the motion of the claimant, made April 26, (p. 19,) for further proof, was had. After hearing, the court took *time to advise.*

On the 2d of May, the motion made by claimant April 26 (*i. e.*, for a hearing on motion for further proof) was overruled, but leave was granted him to file an affidavit. (Rec., p. 20.)

August 10, 1864. For reasons orally assigned it is ordered and adjudged and decreed that *further proof be refused*, [no hearing upon merits ever having been had,] and that the steamer Grey Jacket, her tackle, apparel, and cargo be, and the same hereby are, condemned as lawful prize of war, &c. (Rec., p. 20.)

August 18, 1864. Rule *nisi* is taken by claimant to set aside the sentence and decree of the 10th of August in the case. (Rec., p. 21.)

On August 23, 1864. Rule made absolute and the sentence or decree of the 10th of August is rescinded and annulled, and the cause to be reinstated and tried as though no such decree or sentence had been rendered. (Rec., p. 21.)

August 26, 1864. On motion of claimant, ordered that question of further proof pending in this cause be fixed for argument on Monday, 29th inst. (Rec., p. 21.)

August 29. "This cause came up before the court on ques-

tion for further proof." After hearing argument court took time to advise. (Rec., p. 22.)

August 29, 1864. Affidavit filed *nunc pro tunc*, as of date of May 25, 1864.

September 6, 1864. "For the same reasons heretofore orally assigned, and which will be reduced to writing hereafter, [but which do not appear ever to have been,] it is ordered, adjudged, and decreed that further proof be refused; that the steamer "Grey Jacket," her tackle, apparel, and cargo be, and the same hereby are, condemned as lawful prize of war; that after ten days' advertisement they be sold by the marshal, and the proceeds thereof be deposited in the First National Bank of New Orleans." (Rec., p. 24.)

September 10, 1864. Judgment signed. Appeal claimed for error in refusing further proof and making final decree. (Rec., p. 24.) Appeal allowed. (Rec., p. 25.) Thus condemnation was decreed *without any hearing being permitted upon the proofs*, as appears by the record.

ONLY CASE OF CAPTORS IS THAT OF ENEMY PRIZE.

Upon the case as made by the proofs *in preparatorio*, if there were no incompetent evidence admitted or errors of procedure in the court below, it might well enough be conceded by the claimant that the decree should be affirmed, if the rebellion were a foreign public war, if Alabama were a foreign State, Mobile a foreign port, and the claimant an alien born, whose rights were to be adjudicated solely *jure belli* and by the laws of nations.

STANDING INTERROGATORIES NOT ADAPTED TO REACH THE FACTS IN A CASE OF REBEL CAPTURE.

To ascertain the legal *status* of a vessel upon such state of facts, or in relation to the neutrality of a vessel, "standing interrogatories" were prepared by Sir William Scott, and have been adopted by the courts of the United States without sub-

stantial change. They are not fitted nor intended to elicit the facts necessary to the understanding a capture arising under a rebellion, especially in a country constituted as ours, of *quasi* independent States. No better illustration of such ill adaptation can be had than the disloyal and secession answer they cause Meaher to give in reply to the first interrogatory when the question is not read in connection therewith. On that answer the captors found an argument of disloyalty. (See captor's brief, page 3.) The answer makes witness say, "I was born in Maine; I live in Mobile, and have lived there thirty years; I am a citizen of the State of Alabama, to which *I owe my allegiance.*" (Rec., p. 5.)

The thought springs up at once, if this man is loyal why does he claim to be a citizen of the *State* of Alabama, and to owe his allegiance to her and not to the United States? Because a "standing interrogatory," prepared by a foreign lawyer for a foreign war, makes him say so; no other answer would have been responsive. The question is, first, "where were you born, and where do you now live, and how long have you lived there? Of what prince or *State* are you a subject or citizen, and to which do you owe allegiance?" Could the answer have been other than it was to such a question by any loyal man?

IN CASE OF ENEMY CAPTURING THERE MIGHT BE NO CASE FOR FURTHER PROOF.

It might be further conceded, upon the preparatory proofs, that, in a foreign war and a blockade of a foreign port, if there were no circumstances of license or withdrawal of friendly property to be proved, there would be no such doubtful *status* of the *res* as would permit the Court to allow further proof under the rules and practice in prize courts.

The whole stress of the argument for the captors is put upon the position that this is a capture on the high seas of an enemy's vessel, and enemy property of a claimant enemy by domicil in enemy country, pursuing a voyage in the interest of the enemy government.

CASE DISTINGUISHED FROM ENEMY CAPTURE ON PREPARATORY PROOFS AND DOCUMENTS.

If there cannot be other and vital distinctions from such case, shown as well upon the preparatory as the further proofs offered, then we admit we have no standing in court.

From the preparatory proofs we find that the claimant was a loyal citizen of the United States, (Rec., p. 7, Flynn's 7th answer, p. 10; Newberry's 7th answer,) found at his home in Alabama at the outbreak of the rebellion, from whence he had never been absent during the war, (see answer 21, Rec., p. 6,) a lumberman, planter, and master of a steamer. (Ans. 14 of Newberry, Rec., p. 8.) That having property, which, by the course of the rebels during the war, would, if he left it behind him, be confiscated, he conceived the design of building the vessel and loading it with cotton raised on his own lands or bought with his own money, and getting it, himself, and family away from the Confederate States; that he did so build his vessel and so lade his own cotton on board, (Flynn's testimony, p. 7, ans. 7; p. 8, ans. 14; Newberry, ans. 14, 15, and ans. 43; Meaher, ans. 7, 9, Rec., p. 5; 14 ans., p. 6.) That in order to get a clearance from the Confederate Government he had been *obliged* to take, although his own cotton, one-half of it on Government account. He could get it out in no other way. (Flynn, ans. 12 and 14, Rec., p. 8; Newberry, ans. 19, Rec., p. 10.)

It is matter of history that the Confederate Government allowed no vessel to pass out except with that condition.

Having yielded to this condition *in invitum*, he sailed for Havana under the United States flag, no other on board, (Rec., p. 5, ans. 4 Meaher; Newberry, ans. 4, p. 10,) from Mobile, in the evening of December 30. Steered for Havana. Did not alter his course nor attempt to get away when the capturing vessel came in sight. (Newberry's ans. 36, Rec., p. 11; Flynn's ans., 36, p. 9; Meaher's ans., 36, p. 6.) That he was captured without resistance or any spoliation of his papers or cargo.

THE DISCREPANCIES IN PREPARATORY PROOFS CONSIDERED.

There are some discrepancies in the testimony easily reconcilable. Meaher testifies that he owns the whole vessel and cargo. (Rec., p. 6.) Flynn testifies that it belongs to Meaher in the 7th ans. and in the 12th ans., (Rec., pp. 7, 8,) and in the 14th ans., that the owners were Meaher & Bro. In the 17th he says he knows nothing about bills of lading. Newberry testifies (10, ans. 9) J. M. and T. Meaher owned the entire vessel and one-half the cargo. "I am not certain, but I think the Confederate Government own the other half." Again, "in order to leave the port the Grey Jacket *had* to take half her cargo in Government cotton." (Ans. 19.) The explanation is that Meaher knew the fact that he was sole owner, and Flynn and Newberry did not know. Meaher knew that he put his own cotton on board, and, although forced to consent to ship half on Government account, this did not change the ownership, and it, in fact, was all his own.

This he now offers to prove, and has proved, to the satisfaction of the Secretary of the Treasury.

THE DOCUMENTS FOUND ON BOARD CONSIDERED.

So as to the papers. Meaher says, in answer seventeen, "no bills of lading were signed for the cargo." Being captain and sole owner, there need be none. Would there not have been bills of lading if either his brother or the Confederate Government were interested?

The documents A and B, upon which the captors lay much stress, are neither of them signed by claimant, and therefore ought not to affect him unless it is shown that he agreed to them. The first is an offer by the Confederate Government to furnish the whole cargo on joint account with Meaher Bros. upon certain conditions. This was under date of October 22, 1863, more than two months before the voyage, while the vessel was fitting out. (Flynn's 7th answer, Rec., p. 7.) That this contract was not accepted nor acted on is shown by every witness. (Flynn's answer 14, Rec., p. 8.) "I understood they built this vessel expressly to carry their

own cotton to Havana, but they had to allow Government an interest of one-half in the cargo, otherwise they would not have been permitted to leave."

Document B (Rec., pp. 16, 17) is entirely consistent with this testimony and theory of claimant. It says, there being a difference of weight in 250 bales, marked [M] not marked [C. S. A.] or [M. & B.], belonging to the owner of the Grey Jacket, [not owners,] and the 250 bales marked [M]—all are marked [M]—it is understood, &c., &c., "the difference may be equalized."

Document C, (Rec., p. 17,) being letter of introduction to Herrera & Co., Havana, makes in favor of claimant, as it shows that neither himself nor his brother had ever traded to Havana. If so, they would have needed no letter of introduction, as they would have had a correspondent there. The whole evidence conclusively settles this.

THE NECESSITY FOR FURTHER PROOF TO A JUST DECISION.

But a better answer to all this is, Shall the court be left to grope among inferences, circumstances, misrecollections, or misconceptions of witnesses, to find facts upon which to confiscate a loyal man's property, when, by admitting further proof, the claimant will prove, to the satisfaction of the court, as he has to one branch of the Government, that every answer or allegation that he has made is true, and that he was a loyal citizen, trying to take his property from the grasp of the enemies of the Government, ought to be aided and protected in so doing, and not an alien enemy, whose property is to be condemned under the law of nations.

THE CASE WHICH CAN BE MADE BY FURTHER PROOF.

The claimant offers to prove, if the court will permit him—

1. That he is and always has been a loyal citizen of the

United States, opposing secession before the rebellion, and twice imprisoned for his loyalty by the rebel authories during the war.

2. That he never aided the rebellion in any form, but quietly remained at home, taking care of his business.

3. That, having a large property, he desired to get away with some portion, or all of it, and communicated his design to do so to his confidential friends, and began to prepare for it nearly a year before he could put it in final execution.

4. That he built on his own land, from his own lumber, at his own saw-mill, the Grey Jacket steamer, and loaded her with his own cotton, raised on his own plantation, or bought with his own money, to take with her to Havana, and thence to the United States.

5. That he made arrangements to take his wife with him to Havana, and leave the Confederacy forever, to go and reside with his mother and friends in the State of Maine, where he was born. But that fearing his plans would be suspected if he took his family with him, he made arrangements with his brother to send his wife and family to Havana after him, to join him in Maine.

6. That while his vessel was fitting out he was called upon by the ordnance officer of the Confederacy with a proposition to load his steamer with Government cotton on joint account. This proposition was made to him in the name of himself and brother, so well had he concealed his plans. This proposition he declined; but as he could not be allowed to clear from Mobile without agreeing to take half of the cargo on account of the Government, he agreed to share his own cotton, raised on his own place, or bought with his own money, and marked with his own mark [M], with the Confederate Government: that this was an inflexible rule, and that he could not have got away without complying with it, but intended to repudiate the contract forced upon him as soon as beyond Confederate power.

7. That the Government compelled him to pay the export tax on the whole cargo in gold, which would not have been done if he had taken the Government cotton.

8. That he sailed out past Fort Morgan, in the evening of the 30th of December, with the full intent to deliver himself up to the blockading squadron if he met it, or, failing to so do, to go to Havana; that during the night his vessel was partially disabled, bursting a steam pipe, but he refused to return to Mobile, although, owing to the storm, he had difficulty in

keeping off shore, and was obliged to make all the offing he could.

9. That, seeing the Kennebec, he did not alter his course or attempt to get away from her, although he might have run ten knots, his machinery being repaired, but kept at the rate of four knots till the Kennebec came up.

10. That he was sailing under the American flag hoisted on his vessel, being the only one he had on board, and one which he had preserved through the war at the hazard of his life or liberty. before he was captured.

11. That when boarded he told the officer why his vessel was in this predicament, and demanded protection for himself and property, but was *seized as prize.*

12. That he was thereupon imprisoned for months in a prison ship, taken out and brought before the prize commissioners and made to answer interrogatories put to him without any knowledge of the object, or that he had any opportunity to make any explanations or statements in his own behalf, and that after he had answered everything asked him he was again remanded to prison—no crime being alleged against him.

13. That as soon as he was permitted, to wit: on the 18th of March, 1864, he went before the proper officer and took the oath of amnesty prescribed by the President's proclamation of December 8, 1863, with full intention to keep the same, and has ever kept his oath inviolate. This was more than a year before the war ended, and would have precluded his return to Mobile while the Confederacy existed.

14. That he has proved all these facts to the satisfaction of the honorable Secretary of the Treasury, who has remitted to him all the forfeitures prescribed by the act of Congress of July 13, 1861, and acquitted him of all intention of violating the laws of the United States or of aiding or abetting the rebellion. (See Act of Remission, Appendix to brief, p 2.)

CLAIMANT MAKES NO NEW OR CONTRADICTORY CASE.

All these facts the claimant sets forth in substance in his affidavit of the 25th of May, 1864, but not so much at large, and *no one of them is contradictory to anything he testified to in his deposition in preparatorio.*

MISAPPREHENSION OF FACTS BY CAPTORS.

The suggestion in the captor's brief (p. 9,) that claimant prepared "his affidavit of August 29, 1864, to meet the case after the discovery of the documents," is founded on a mistake of date, and is as groundless as it is mistaken in fact. His affidavit was prepared May 25, 1864, as the *jurat* shows. (Rec., p. 24.) It was not allowed to be filed till August 29, 1864.

Besides, the mate, Flynn, and the engineer, Newberry, had both set up the same account of the supposed Confederate interest in his cotton in their testimony *in preparatorio*, that he does in his affidavit. (Rec., Ans. 12, 14, p. 8; Ans. 19, p. 10; and Ans. 43, p. 11.)

Further: claimant of course knew what documents he had on board. He testifies (Ans. 35, Rec., p. 6) "that all the papers on board signed by himself were entirely true and fair."

Again, other suggestions in captor's brief (p. 6) that "an intention on the part of the claimant to return to his residence and business in Mobile" is perfectly consistent with the contents of this affidavit; "and that there are no facts in the affidavit tending to show any dissolution of the claimant's commercial establishment and domicil in Mobile prior to or at the time of his sailing on this voyage, or any suspension of the mercantile pursuits in which he had been engaged during the war;" and that his affidavit carefully conceals that the claimant was a member of a house of trade in Mobile largely engaged in the enemy's commerce, are also founded on an entire mistake of facts. The affidavit expressly sets forth that the claimant desired to "withdraw the property he was in possession of, or as considerable a portion of it as was practicable, from the so-called Confederate States, to a place of security, and get into such a position that he might realize the value of it and return to the State of Maine, where his mother now lives, and where he has property and many relations and friends; that with this object and intention, as well known to several of his confidential friends, he built the steamer Grey Jacket with his own means, with the design of lading her with cotton belonging to himself."

"And he further says, that it was at first his intention to have taken his wife and children with him on board the said steamer, on the said proposed voyage to Havana, but that he was afterwards deterred from attempting to do so lest it should strengthen the suspicion which already existed against him in the minds of the rebel authorities, and prevent his getting away at all,

and that he at last unwillingly abandoned the idea, and left them, after having made an arrangement with his brother, I. M. Meaher, to send them as soon afterwards as he could find a suitable opportunity to Havana, where they were to place themselves under the care of the commercial house of Santa Maria, with whom he, Timothy Meaher, was to have made an arrangement."

Again, the proofs *in preparatorio* do not show any "house of trade" or "commercial establishment in Mobile largely engaged in enemy's commerce" but that he himself and brother; had a plantation and a saw-mill, and were men of means, and bought this cargo expressly to get out of the Confederacy, (Rec. p. 8, 14, Ans. of Flynn, p. 11, 43, Ans. of Newberry,) and that his own business was master of a steamboat.

ARGUMENT BY CAPTORS

WHY FURTHER PROOF SHOULD NOT BE CONSIDERED.

IT IS URGED BY CAPTORS, that the rule in prize proceedings is that the proofs *in preparatorio* cannot be contradicted; that these establish the decree beyond doubt; and, therefore, whatever may be the merits of claimant, he cannot be heard. (Captor's Brief, p. 11, 7th point.)

This is a technical rule, and technical answers are sufficient. If such is to be the force of the evidence *in preparatorio*, then, acting in *strictissimis juris*, the testimony must be taken in full compliance with all the rules of prize courts, and no other proof can be heard for the captors. *A fortiori* the claimant is entitled to be heard in the fullest manner upon that proof, and none other, before he is condemned.

Therefore, we submit that in this record there are errors of procedure which ought to reverse this decree.

1. All the standing interrogatories provided by the rules of the Court have not been put to captain and claimant Meaher. The 5th being omitted, so that the witness has had no opportunity to explain the circumstances of his capture, throwing light on the question of his intention to deliver himself up to the captor, and claim his protection of the Government.

This rule is imperative and vital.

Upton's Prize Law, 1st vol., 291.
Rule 12, page 295.

2. It does not appear that any of the interrogatories, save the first one, were answered by any witness. Again, the 41st,

42d, and 45th answers of Flynn are all written together, without designating to which interrogatory they belong. This is substantial. We are left in doubt by the omission of the 5th answer in Meaher's testimony, and by this mingling of replies, whether the answers are responsive to the interrogatories. This, too, is in violation of the rule.

Upton, 292; Rules 13 and 19.

3. There is error in admitting the report of the prize commissioners, including the testimony of the prize master, Emerson, (Rec., p. 4,) and the letter of Lieutenant Commander McCann, the captor, in evidence.

The rule is inflexible, that, until an order for further proof, no evidence but the testimony *in preparatorio* and the documents found on board are admissible on either side.

Wheaton, 494, note.
The Francis, 1 Gall., 614.
S. C., 8 Cranch, 348.
Diana, 2 Gall., 164.

Captor's brief, p. 1, recites the same evidence as captor's letter.

4. The record shows no hearing upon the merits by the Court, but on the contrary shows that there was none. Upon putting in the testimony, a motion for further proof was made and that motion denied, but no opportunity given for a hearing upon the point opened by the evidence, that this was a revenue forfeiture and not prize of war. Although the rule is that the cause should be heard on the preparatory proofs in the first instance, so that if the motion for further proofs is overruled nothing is left but condemnation, yet the record expressly shows that no hearing was at first had.

Record as recited in "Statement of the Case" in the Brief.

THE *RES* IS NOT ENEMY PROPERTY.

The first point on which captors rely to show why further proof should not be had that this was enemy property, even if the sole property of claimant, may be thus answered:

1st. Being simply domiciled in rebellious territory, without any act shown, does not make a loyal citizen an enemy, within the legal definition of enemy, without some declaratory act

by his sovereign; certainly not so as to remit his rights to be tried by the laws of nations in a prize court.

Judge Treat's opinion, p. 24, citing opinions of Nelson and Swayne.
The Dickenson. Marriot's Decisions, p. 1–46.
The Venus. 8 Cranch, 280, 294, 301.

The property of rebels is not confiscable as prize of war but by forfeiture.

The William and Grace. Marriot, 76.
The Rebecca. Ibid, 197–210.
The Renard. Ibid, 222–225.

This case is principally valuable for the clear definition the Court gives of the validity and force of the law of nations, "which everybody quotes and nobody minds."

2d. Because, at worst, being only a "quasi enemy" by construction of domicil, his *status* changed as soon as he formed the intention of returning to his allegiance, and did any act carrying out that intention.

Lawrence's Wheaton, 564–567.
The Indian Chief. 3 Rob., 17–12.
The Venus. 8 Cranch, 280.

3d. He had escaped from the enemy country with his property, and was on the high seas, on his own deck, under the American flag, which he had a right to raise, having protected it through the rebellion; his domicil *eo instante* changed; no longer an enemy, even by construction, but a free American citizen. His property, being enemy only because of his *status*, partook of the change with him. The flag determined the character of the vessel and cargo in absence of all papers.

The Vrow Elizabeth, 5 C. Robinson, 5.

THERE IS ALWAYS A RIGHT OF WITHDRAWAL.

This right of withdrawal of person and goods from hostile

territory by a citizen, has always been recognized, and applauded as an act of loyalty.

Marriot's Decisions, pp. 76, 197, *et seq.*
The Guana Paper-books, decisions of Lords in Prize Cases, vol. 1, 1
Appendix, p. 32, C. C. Pinckney, per Nelson, J., Prize Cases, 668.
Halleck Int. Law, 500, chap. 31. Appendix p. 52.
Duer's Insurance, 561. See Appendix to brief, p. 52.
The John Gilpin, Blatchford's Prize Cases, 661.
The Sarah Starr, Ibid, 651.
Fifty-two Bales of Cotton, Ibid, 644.

WHAT IS A REASONABLE TIME FOR THE ASSERTION OF THAT RIGHT?

The whole question that has ever, as to withdrawal of persons and property, arisen, has been, what is a reasonable time? That question must always be decided by the circumstances of each case. Nothing can be deduced from rules in a foreign war, as applicable to this rebellion. The citizen had a right to suppose that his government would put down the rebellion within a reasonable time, so that he would not be obliged to quit home and property, as was hoped by all, and so wait. The Confederacy did not allow their citizens to leave, if the intention so to do was known. All were retained for conscription and taxation. All the cases cited decide that a reasonable time is to be given to collect property, but the very collection of it would lead to suspicion and confiscation by the enemy.

The war was carried on by the rebels in an unusual and barbarous manner towards persons disposed to be loyal; by such acts as sequestration of debts due northern creditors—everywhere denounced as a gross violation of public faith; even Bynkershoek is against it.

See the Alien Act of Confederate States.

If this course of the rebels furnishes no reason for relaxation of the rule by the courts, it certainly tends to excuse delays, and accounts for inconsistencies in the conduct of the claimant not to be judged by the rules of foreign warfare.

The Ocean, 5 Robinson, 91.

In the case of the St. Lawrence, 9 Cranch, 121, cited in the captor's brief, where eleven months, under the facts, was considered an unreasonable delay, yet the Supreme Court granted motion for further proofs.

Leave is taken to suggest, that in the case of a rebellion the rule should be that it is a reasonable time, whenever the *withdrawal is made in good faith*, to be determined by the facts of each case.

Some light may be thrown on what is a reasonable time by reference to the time given for subjects of a country changing its sovereign by conquest or treaty, to settle their affairs and make the election of returning to their former country. By the treaty of Amiens, Demerara was restored to the Dutch. By that treaty three years were allowed to the inhabitants of whatever country to settle their affairs and to dispose of their property.

The Diana, 5 C. Robinson, 60.

It will be observed that claimant had been a year perfecting his plan of removal, so that he had remained only a year and a half after war was actually declared.

See Prize Cases, 2 Black.

THE BLOCKADE WAS NOT ESTABLISHED TO MEET SUCH A CASE AS IS MADE UPON THE PROOFS.

The second claim of captors why further proof should be refused, and condemnation decreed, is that the voyage was a breach of blockade.

This begs the whole question sought to be shown by the claimant by his further proof. The blockade was declared for the purpose of repressing the rebellion, "and to the protection of the public peace, and the lives and property of quiet and orderly citizens pursuing their lawful occupations," not to hinder loyal men from escaping from the rebel power. If in good faith the claimant sought to escape, how could such escape be a breach of the blockade?

See President's Proclamation, Appendix p. 27.

WHAT IS TRADING WITH THE ENEMY?

Of the same character is the claim of guilt from "illicit trading." (Captors, 3d point brief, page 10.) What is trading with the enemy? Mr. Justice Johnson defines it, (The Rapid, 8 Cranch, 163,) "*Intercourse* inconsistent with actual hostility is the offense against which the operation of the rule is directed." Is it intercourse inconsistent with hostility for a citizen finding himself in an enemy's country, and wishing to return home and resume his allegiance, to run away and take all the property he can with him to bring to his own country?

THE FACTS STATED AND ACTS OF THE GOVERNMENT OPERATE AS A LICENSE.

We answer, further, that the claimant had full license for what he did, as well in the supposed breach of blockade as in the supposed commercial intercourse with the enemy in bringing away his property.

This license arises from three sources.

THE NECESSITY OF THE CASE.

1. A license to do that which ought and is meritorious to be done may be presumed when precedent application is impossible.

Duer on Insurance, p. 364.
Cosmopolite, 4 Rob., 11.
Madonna Dele Gracie, 4 Rob.

BY THE REMISSION OF THE SECRERARY OF THE TREASURY.

2. By the act of July 13th, (12 Stat. at Large, 255) the President might license commercial intercourse with the revolted States.

See extract from act of July 13, in Appendix to Brief, p. 24.

Can there be any doubt that the President would have granted a license to Meaher to come out under the case attempted to be shown by the further proofs if he had made application to him for a license so to do?

This excuses license.

Duer, *ubi supra.*

But it was impossible to make the application.

By this proclamation of August 16th and the act of July 13, 1861, the whole power of licensing trade and the remission of forfeitures is put in the Secretary of the Treasury. (See proclamation in Appendix, p. 29.) His remission acts as a precedent license. He has sanctioned whatever was done by Meaher, which led to his capture.

Duer, as cited in Appendix, p. 50.

3. BY THE PROCLAMATION OF DECEMBER 8, 1863,

the President invited all rebellious enemies, with certain exceptions, of which the claimant was not one, to return to their allegiance, promising them full pardon and amnesty for all acts upon their taking the prescribed oath of amnesty, with full restoration of all rights of property, except slaves.

See Proclamation, Appendix, p. 30.

This was a proclaimed license to every enemy in fact or by construction, within its terms, to come within the Union lines with full restoration of all rights and property.

The Herselder, 1 C. Robinson, 117.

Can it be believed for a moment that any rebel enemy coming from a disloyal to a loyal State, through the lines of the Union army, bringing his property with him, and at the first practicable moment taking the required oath, as did Meaher, either could or would have his property confiscated? And why not? Because he was invited, and therefore licensed, to come and thus "trade with the enemy." Can it make any legal difference in his license that the claimant came with his property water-borne?

Such remissions have been made by every Secretary of the Treasury.

The Amazon, Appendix, p. 39, 1865.
The Cyclops, Mr. Secretary Fessenden, 1864.
The Florida, Mr. Secretary Chase, 1864.
The George W. Hynson, 1861.
The Shindler, 1861.

The Florida, Cyclops, and Amazon were libeled and condemned as prize.

The remission, is a license coupled with a final adjudication of the *bona fides* of the licensee in his acts under it, and must relate back to the inception of the voyage.

All licenses, either express or implied, are to be construed with the greatest liberality.

The Jonge Klamina, 5 C. Rob., 301.
The Clio, 6 C. Rob., 67.
The Eolas, 1 Dod., 300.
Duer's Insurance. Appendix, p. 50.

To the suggestion that we cannot be allowed further proof, because that we had violated the act of July 13th, we answer that all penalties under that act are remitted to us by the Government.

THE POWER TO MAKE THE REMISSION AND ITS EFFECT UPON THE *RES*.

The Government has the power to release all penalties and forfeitures and all maritime captures, irrespective of the claims of captors or informers, up to the moment of distribution of proceeds. Such is the settled doctrine of the prize courts.

The Elsebe, 5 Rob., 173. (See Appendix, p. 35, for this opinion.)
See, also, collection of American authorities on this point, Appendix, p.
The Nassau, per J. Nelson, Blatch., Prize Cases, 601.
H. M. S. Thetis, 3 Hazzard, 231.
French Guiana, 2 Dod., 156–158.
The Diligentia, 1 ibid, 404.
Fifty-two bales of cotton, per J. Betts, Blatch., prize cases, 310.

The Aigburth, ibid, ibid, 635.
Cyclops, per J. Cadwallader, Appendix, p.
Cargo remitted, the Amazon, ibid, p. 49.
Vessel remitted, the Florida, ibid, p. 42.

The only doubt has been whether the President could make the remission, or whether the power was wholly vested in the Secretary of the Treasury.

See discussion in case of Sangster, adm'r., in Court of Claims, stated in collection of American authorities upon this point in Appendix to Brief, p. 55.

This power has been claimed and exercised by every Secretary of the Treasury since the war.

The Florida, Secretary Chase.
The Cyclops, Secretary Fessenden.
The case at bar, Secretary McCulloch.
} See Appendix. *Ubi supra.*

This power, if in the President, is expressly conferred upon the Secretary by proclamation of August 16, 1861, so far as the act of July 13th is concerned. See proclamation, Appendix, p. 27.

This power is given expressly by the act of July 13, 1861, to the Secretary of the Treasury, and this capture comes within the sixth section of that act, as is admitted so far as the vessel is concerned, "being found at sea" and the property of an inhabitant of an insurgent State. See sixth sec. act of July, 13, Appendix, p. 24.

But the cargo must go with the vessel and partake of its character, especially where there is same owner to both. See Judge Cadwallader's opinion, The Amazon, Appendix, p. 39.

IT IS EARNESTLY SUBMITTED THAT IS A CASE OF TREASURY FORFEITURE AND NOT OF MARITIME PRIZE.

Upon this point the court is referred to the able, luminous, and exhaustive discussion in the opinion of Justice Treat, of Eastern Missouri district, filed with the brief on behalf of the Treasury.

It is only desirable to add some considerations and authorities which did not arise from the facts within that discussion:

BRITISH ACT OF FORFEITURE ADMINISTERED IN THE PRIZE COURTS, NOT THE LAWS OF WAR.

In the Revolution of 1775 the British Parliament passed an act of non-intercourse and forfeiture of rebel property, from which the act of July 13th, 1861, was drawn, and its necessity was argued from the same consideration as in this rebellion.

See letter of Hon. Secretary Chase explanatory of act of 1861. Cong. Globe, 37th Cong., 1st sess., p. 55; Appendix, p. 33.

The British act contained no relief from forfeitures under it, so that there was the strongest disposition to hold the captures maritime prizes, yet in every instance the forfeitures were adjudged to the Exchequer and not to captors, or as "Droits of Admiralty," save in the first case arising, (The Dickenson, Marriot's Decisions, page 1,) and in that case the judge, Sir George Hay, publicly declared that he repented of that decision. Ever after the decisions were made as forfeitures.

Marriot, 74, 197, 222.

We have caused the "Paper books of the Appeals to the Lords" to be examined, and find all cases were brought on the Instance side of the court, although the act denominates the property as that of "open enemies," and to be proceeded against "*as lawful prize.*"

See Paper books of Appeals to the Lords, *passim.*

The blockade declared by proclamation of April 19, 1861, is a *pacific*, and not a *belligerent* blockade. It is made so in terms: "To the protection of the public peace, and the lives and property of quiet and orderly citizens pursuing their lawful occupations, *until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased, have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States, and of the law of nations in such case provided.*"

The orner of blockade was instituted only in reprisal for the proclamation granting letters of marque by Jefferson Davis, April 17, 1861.

See proclamation of April 19, 1861, Appendix, p. 27.

The blockade was made specifically "under the laws of the

United States and the laws of nations." A *belligerent* blockade could have been only under the laws of nations, *jure belli*, in such case provided.

Congress did deliberate thereon, and the acts of July 13 and August 6 were the results of these deliberations, with authorization of the President to make a new proclamation on the subject of commercial intercourse with the rebellious States.

Stat. at Large, vol. 12, 257.
Ibid, 319.
See Appendix, pp. 24, 25.

The proclamation was issued August 16, commanding, amongst other things, as follows: "And *I hereby enjoin upon all district attorneys, marshals, and officers of the revenue, and of the military and naval forces of the United States*, to be vigilant in the execution of SAID ACT, and in the enforcement of the penalties and forfeitures imposed or declared by it; leaving any party who may think himself aggrieved thereby to his application to the Secretary of the Treasury for the remission of any penalty or forfeiture, which the said Secretary is AUTHORIZED by law to grant, if, in his judgment, the special circumstances of any case shall require such remission."

From notification of that proclamation the blockading fleet became, by the authority of Congress and by order of the President, employed on the revenue service, so far as the acts of trade of the insurgents were concerned, and "blockading force" *quoad* neutral or hostile nations.

The rights and wrongs of the rebels to be adjudged by the municipal laws of their country, which alone were applicable to them, and the neutral or hostile offenders to be tried by the prize courts of the country under the law of nations, to which alone they were amenable.

This course was taken by Congress instead of leaving the citizen to the rigors of blockade and prize capture in order to meet meritorious cases like that at bar, "and when hardships shall arise provision is made by law for affording relief under authority much more competent to deal in such cases than this court ever can be." Per J. Johnson.

1,960 Bags of Coffee, 8 Cranch, 405.

It is objected "that in any case of vessel and cargo right-

fully captured on the high seas, *jure belli*, by duly commissioned belligerent naval force, and liable and duly prosecuted to condemnation in a prize court, as good prize under the law of war, such capture, liability, and adjudication absorb and supersede any statutory forfeiture or liability to forfeiture of such vessel or cargo for violation of the municipal law."

Captor's Brief, p. 15, and the cases of the Rapid and Sally, 8 Cranch, 163 and 384, are alone cited in support of this so broad a proposition.

Can this be so? The Rapid and Sally were privateer captures, and by the commission and letters of marque the Government had bestowed upon the private captors all the interest the Government might have in the prizes taken by them, and it would have been as iniquitous for the United States to have set up a previous municipal forfeiture to them as against the privateers as it is for the captors in this case to set up a prize forfeiture in the name of the United States for acts done by one of its citizens which have been decided by the Treasury Department, as appearing "to its satisfaction that the said forfeiture was incurred without any intent on the part of the petitioner to violate the laws of the United States, or to aid or abet the insurrection against the Government of the United States, and that the petitioner is a loyal citizen."

See recitals in remission, Appendix, p. 2.

In the case of the public naval vessels as we have seen, there is no such grant; the whole property being in the United States and wholly at the disposal of the Government free from any claim of the captors, till distribution as we have before seen.

But the claim of the captors is to the extent that all municipal rights are "absorbed" in the *laws of war* because the cause is brought for adjudication in a prize court.

This needs a broader answer. The Constitution is the supreme law of the land, and the laws of Congress made in accordance with it must operate whether in peace or war wherever "the American army or navy may go," the laws of war, *jure belli*, to the contrary notwithstanding.

Ex parte Milligan, Sup. Court, Dec. T., 1865.

The Constitution has given power to Congress to "make rules concerning captures on land and water," and to "punish offenses against the laws of nations."

Cons., art. 1, sec. 8.

Congress has exercised that power *quoad* rebellious citizens by the act of July 13, 1861, forfeiting to the United States (not as prize of war) the vessels of rebellious subjects "found at sea," and as to offending neutrals and foreign enemies by leaving it to the *jus gentium* to punish their offenses because Congress had no municipal jurisdiction over them.

The Executive has ordered "all military and naval officers, district attorneys, and marshals to be vigilant in enforcing that act."

Can a naval officer and a district attorney, by colluding together to bring the cause on the Prize side instead of the Instance side of an United States Admiralty Court, thus avoiding their proclaimed duty, oust the United States of its forfeiture and property?

The statement of such a proposition is its best answer.

But far worse and more wretched; can such officers of the United States, by thus bringing their libel, force and compel a citizen over whom, however erring, the ægis of the Constitution is ever thrown *de jure*, and *de facto* when brought before his country's courts, to have questions of his guilt, innocence, or property adjudged by the laws of war or the laws of nations, instead of the municipal laws framed under the provisions of the Constitution of his country?

A fortiori, may not this be done to a citizen whom one Department of the Government, having jurisdiction over the subject-matter, has adjudged and found innocent, so as to deprive him of the remedy given him by law to save his rights from the consequences of a technical forfeiture because of an unintended acts?

But, it is said that although the *res* may be confiscable under the act, yet it is also as prize, and as the jurisdictions are concurrent, that which first attaches shall hold the property for adjudication. Not sound, but be it so *argumenti gratiâ*. This is technical, and a technical answer is sufficient for the purposes of justice. The vessel was "found at sea" by the naval captor in doing his duty under the President's proclamation before he could capture her. When "found," *eo instanti*, by force of the statute, she was forfeited to the United States, and the title of the United States could not, either by

capture or by sale to an innocent purchaser without notice be divested.

U. S. *vs.* 1,960 Bags of Coffee, 8 Cranch, 398.
U. S. *vs.* Grundy *et als.*, 3 Cranch, 351.

Again, it is said the Secretary of the Treasury has no power to extend the remission to "hostile ownership," or "breach of blockade," or "unlawful trading with the enemy."

The statute expressly empowers the Secretary of the Treasury to make regulations to license and permit trade, otherwise unlawful, "in such articles, for such time, and by such persons as the President may think most conducive to public interest;" and would it be contended that a vessel of hostile ownership even, with his license might not pass the blockade and trade with the enemy without seizure and forfeiture *jure belli*, or in any other way?

We have already seen that in intendment of law the Secretary's remission of the forfeiture arising from each and all the acts which are relied on here for condemnation, and which he has the power to license, operates a license to do those acts. He has remitted all forfeiture for the acts which he had power to license, and thus licensed the acts which he has remitted, by adjudicating that each and all were done by a loyal citizen, *bona fide*, with good intent.

The remission is complete and full. The Government having for good cause abandoned its rights for one purpose, has abandoned them for all. The captors cannot be allowed to set up a title which the Government has released. They have no standing in court for such purpose.

On this point Sir WILLIAM SCOTT speaks with for and clearness in the Elsebe: "And, I must add, that though I have suffered a party to stand before the court for the purpose of arguing the question, I do not know the party who can legally stand before it, praying a condemnation to the Crown, which the Crown itself publicly renounces." * * * *
"When I state the position contended for on the part of the captors to be in effect this, that it shall be in the power of every man who has made a capture, of the pettiest commander of the pettiest privateer, to force on, in spite of all the pru-

dence of the Crown, opposed to such an attempt, the discussion and decision of the most delicate questions, the discussion and decision of which may involve the country in the most ruinous hostilities, I state a proposition that must awaken the apprehension of every man who hears me as to the extent of the danger which would attend the establishment of such a principle."

Elsebe, 5 C. Rob., 173–192.

AS TO FURTHER PROOF AND THE FILING OF AMENDED ANSWER AND CLAIM.

It is submitted that by the rules in admiralty, in the discretion of the court, a new claim may be made in appellate court, or a new answer made, whereby no new subject of controversy is introduced, save such new matter as has arisen since the decree.

The Edward, 1 Wheaton, 261.
The Mariana Fiora, 11 Ibid.
Brig Carolina, 7 Cranch, 496.
Schooner Adelaide and Cargo, 9 Cranch, 294.

Per STORY, Justice, (S. C., 1 Gallison, 22.) The reason of rule is that on the appeal the proceedings are considered *de novo* in the appellate jurisdiction.

Further proof will always be admitted by the court for the purposes of justice, and the court may direct upon what points it desires to be informed.

The Mary Stafford, 8 Cranch 389, 398.

It is suggested by the captors that further proof will not be allowed when there is no doubt on the primary testimony. It is argued by captors that there is a conflict of testimony between Meaher, Flynn, and Newberry. When the evidence *in preparatorio* is conflicting, further proof is always allowed if invoked.

The claimant prays leave to call to the attention of the Honorable Court the "depositions taken *de bene*," which are presented in aid of the claimant's affidavit and motion for further proof. They will be found on pp. 7 to 23, inclusive, of the Appendix to Brief.

All which is respectfully submitted.

BENJ. F. BUTLER,

Of Counsel for Claimant.

APPENDIX TO CLAIMANT'S BRIEF.

STEAMER GREY JACKET AND CARGO, TIMOTHY MEAHER CLAIMANT, Appellant,

vs.

THE UNITED STATES.

Additional Answer—[*Presented March* 16, 1866.]

And now comes Timothy Meaher, owner and claimant of the steamer Grey Jacket, her tackle and cargo, a loyal citizen of the United States, and at the time of said capture of said vessel, to wit, December 31, A. D. 1863, an inhabitant of the State of Alabama, a State then declared in insurrection by the proclamation of the President of August 16, A. D. 1861, who doth say and articulately propound:

That the vessel was built in 1863, in said State of Alabama, by himself, and that the cargo of said vessel was the product of said State of Alabama, a large part being raised therein by himself; and that said vessel and cargo was his own property, and at the time of said capture was "found at sea," being in course of transit from said State of Alabama to a loyal State, via the port of Havana, for which he was obliged to clear in order to escape from the military power and authority of the confederate States, then rebelliously at war with the United States.

And he doth further propound and say that, with said vessel and cargo, he was then escaping from said confederate States to a loyal State, without any intent therewith or thereby to violate any law of the United States, but with the sole purpose of putting himself and his property under the protection of the United States.

And he doth further answer and say, that since the decree in said district court for the eastern district of Louisiana, in this cause, and since the last continuance, he, the said Timothy Meaher, by his petition, did set forth, show, and make known all said facts in this, his further answer, declared and averred to the honorable the Secretary of the Treasury of the United

States, and said facts did prove and make good to the satisfaction of the honorable the Secretary of the Treasury of the United States, and thereupon obtained a remission of all forfeitures incurred because of said acts, in said libel and proof set forth, accruing to the United States, by the warrant of the Treasury Department, duly executed, of which he makes profert here in Court and prays oyer, in the words and figures following, that is to say:

To all to whom these presents shall come:

I, Hugh McCulloch, Secretary of the Treasury of the United States, send greeting:

Whereas a petition has been made before me by Timothy Meaher, a citizen of the State of Alabama, for the remission of the forfeiture of the steamer "Grey Jacket," and her tackle and cargo, incurred under the statute of the United States entitled "An act further to provide for the collection of duties on imports, and for other purposes," approved July 13, 1861;

And whereas I, the said Secretary of the Treasury, having maturely considered the evidence submitted to me in support of said petition, and it appearing to my satisfaction that the said forfeiture was incurred without any intent, on the part of the petitioner, to violate the laws of the United States, or to aid or abet the insurrection against the Government of the United States, and that the petitioner is a loyal citizen, and that said steamer and cargo were condemned by the United States district court for the eastern district of Louisiana as prize of war;

NOW THEREFORE, know ye that I, the Secretary of the Treasury, in consideration of the premises, and by virtue of the power and authority to me given by the said eighth section of the said act of July 13, 1861, do hereby decide to remit to the petitioner all the right, claim, and demand of the United States to the said forfeiture, upon payment of all costs taxed by said court in all proceedings touching said steamer and cargo, and of any tax upon said cargo of cotton, if not already paid, that may have been due to the Government at the time of the capture of said steamer, so far as such forfeiture was incurred under the provisions of the act of July 13, 1861, but not otherwise.

Given under my hand and seal of office in the city of Washington, this twenty-first day of March, in the year of [L. S.] our Lord one thousand eight hundred and sixty-six, and the ninetieth year of the independence of the United States.

(Signed,) HUGH McCULLOCH,
Secretary of the Treasury.

Wherefore, by force of the statute in such case made and provided, all said supposed forfeitures and penalties are remitted and held for naught, upon the conditions of payments in said warrant specified, which he here proffers to make good.

Wherefore the said Timothy Meaher, claimant as aforesaid, prays that the decree of said district court may be set aside, annulled, reversed, held for naught, and entered for him, and that the cause be remanded, and said District Court may be directed to pay him, the said Meaher, the moneys now remaining in said Court, the proceeds of the sale of said vessel, her tackle, and cargo, less such sum as will make good the costs and taxes mentioned in said warrant; and that he be discharged of all further penalties or forfeitures, costs, or damage, because of anything in said libel alleged.

TIMOTHY MEAHER,
By his attorney in fact
JOHN HUTCHINS.

BENJ. F. BUTLER,
Of Counsel.

CLAIMANT'S PETITION.

To the Hon. HUGH McCULLOCH, *Secretary of the Treasury:*

The petition of Timothy Meaher, a native of the State of Maine, and for thirty years last past a resident of the State of Alabama, respectfully shows that he is and ever has been a loyal citizen of the United States.

That being a resident of Alabama, with his family and property all there, at the breaking out of the rebellion, he was unable to leave the Confederacy, except as hereafter set forth; during that time he was twice imprisoned by the rebel authorities because of his exhibition of loyalty to the flag and to the Union.

That early in the year 1863 even he, conceived the plan of escaping from the Confederacy with his family and property.

For this purpose he built of timber cut from his own land and sawed at his own mills, a vessel which he called the "Grey Jacket;" that his intention in building her was to load her with cotton, so as to be able to get away with a part of his property, take his family on board, and leave the Confederacy forever.

He commenced building this vessel in March, 1863, and employed men to refit her machinery from old river steamers which belonged to him; he purchased her iron and rigging himself; that he loaded her with cotton grown upon his own plantation, or purchased by him only for this express purpose; that he completed his vessel in December, 1863, after consuming nearly a year in her construction and equipment.

During the time he was thus employed, he became so much an object of suspicion to the rebel authorities that he was obliged to abandon the project of taking his family with him; and that the authorities refused to permit him to sail from the port of Mobile, except upon the express condition that he should said for Havana and should there account to the agent of the confederate government for one.half of the proce eds of his cargo of cotton. This condition was exacted of all vessels sailing out of that port for Havana, and no clearance could be procured without complying with it, which condition, after a long delay, he acquiesced in, only for the purpose of obtaining a clearance for his vessel.

Your petitioner disclosed at the time his plans and intentions to those confidential friends that he could implicitly trust only, as the discovery of them by the authorities would have endangered his life.

That he sailed from Mobile on the 30th day of December, 1863, with the full intentiou of delivering himself and vessel to the blockading squadron, if he should meet them, and otherwise to convey himself and his vessel, if she would hold together so long, to Havana, or some port of the northern States; and once out of Mobile harbor he did not put back, although his boat was partially disabled in a storm the first night out.

That on the morning of the 31st of December the gunboat Kennebec came in sight; that he did not attempt to escape, but raised the American flag, it being the only one he had on board his vessel, and one that he had preserved during the whole time of his residence in the Confederate States; that upon being boarded by the officer of the Kennebec, your

petitioner demanded of him protection for himself and property, *telling the officer at the time why his vessel was in this predicament; but the officer seized both vessel and cargo as prize of war.*

That said vessel and her cargo, consisting of 449 bales of cotton, was first sent to Pensacola, and then to New Orleans, where your petitioner was brought a prisoner, but not allowed to communicate in any manner with the shore until the 18th day of March, 1864, when he took and subscribed the President's amnesty oath of December 8, 1863, before the clerk of the United States district court for the eastern district of Louisiana; that he ascertained, upon his release, that proceedings had been instituted in said court for the condemnation of said vessel and her cargo as prize of war, *while he was detained as a prisoner*, without notice to him; and that afterwards a decree of condemnation was entered in said case, and said vessel and cargo were sold by the United States marshal of said eastern district of Louisiana to the highest bidder, all of which your petitioner alleges to be unjust, and in direct violation of the spirit and letter of the amnesty oath and proclamation of December 8, 1863.

Your petitioner avers, and will satisfy the honorable Secretary of the Treasury, that he was a loyal man attempting to escape from the Confederacy with his property, which he had never aided, and to take the same into the loyal States by way of Havana, if his vessel should prove fit for the voyage, in order to meet his wife and family, whom he had sent out of the Confederacy by another channel, and for whom he had arranged to live at the house of his mother in the State of Maine; that he had no intention to violate the act of Congress regulating commercial intercourse with the insurgent States, of which he was a citizen, or any law of the United States, although the acts which he was doing at the time of the seizure aforesaid, apart from the intention and purpose with which they were done, might be a legal and technical violation of said act, so that he may have no defense in a court of law; especially as the district court, in which his vessel was tried, ruled and held that the intention and purpose of your petitioner could have no legal effect in the determination of the cause.

As his seizure by the Kennebec, then employed in enforcing said act of Congress, under the proclamation of the President, could in no sense be a capture to render the property maritime prize of war, your Petitioner therefore humbly prays the protection of the United States, and that justice may be done, and that the technical forfeiture be remitted by the order of the

honorable Secretary, in accordance with the eighth section of said act, and that the proceeds of the sale of his vessel and cargo, now in the custody of said court, may be released to him upon the payment of such legal costs and expenses as may have been incurred by the officers of the United States in the proceedings thereupon.

And your petitioner will ever pray.

TIMOTHY MEAHER,
Per S. W. COZZENS,
His Attorney in Fact.

BENJ. F. BUTLER,
Of Counsel.

DEPOSITIONS DE BENE ESSE.

DEPOSITION OF CHARLES M. NEWBERRY.

IN THE MATTER OF THE UNITED STATES

vs.

STEAMER GREY JACKET AND HER CARGO.

Admiralty Prize Court, U. S. District Court Eastern District of Louisiana.

Charles M. Newberry, being duly sworn, deposes and says: I am forty-five years old. I was born in the State of New Jersey. I lived there until I was eighteen years old. Since that time I have lived in Mobile, Alabama. I have known Captain T. Meaher since 1836. I have been employed by him ever since the rebellion broke out. I have been in his employ for fifteen years. I have seen him as often as once in four days since the rebellion broke out. Our business called us together as often as that. I have seen him much oftener. We lived some three miles apart. I have known his sentiments, since the rebellion broke out, by his acts and conversation. He spoke and strove against secession as long as there was any use in it. Since then he has had to be very quiet, but has been a determined Union man. He has been twice arrested by the confederate authorities for showing his Unionism; once for playing "Hail Columbia" upon the calliope on one of his boats. He was released through the influence of the passengers on the boat. This was when the boat "Republic," which Captain Meaher owned and commanded, was starting from Mobile. The other arrest was in August, 1863. It was in Montgomery, on his boat, for refusing the transportation on his boat of freight for the confederate government. The freight was locomotives, that were for the new road from Selma to Meridian. He was detained between two and three days. He got released through the Governor of Alabama, (Gov. John Gill Shorter.)

Captain Meaher has done nothing to aid the rebellion. He has held no office under the confederate government, nor in the confederate army, all through the rebellion. I have been in the confidence of Captain Meaher. I was his engineer. He has always determined to stand by the Union cause, and had often told me that whenever an opportunity came he should do all he could.

In February, 1863, Captain Meaher was, in my opinion, worth from $600,000 to $800,000. In February, 1863, he communicated to me his plans of taking as much as he could where he could be protected by the United States laws and naval forces. He said that he wanted to take his wife and children with him, but that he could not because that would excite much suspicion; he said he must leave them in the care of his brother till he could send them out. I know that he had such arrangement with his brother to send them to Havana the first opportunity. The rest of his property, besides that which he could bring with him, he said he must leave with his brother to do the best he could with, and to send it to him as soon as he could. His plan, as in February, 1863, he disclosed it to me, was to build a steamer large enough to hold eight hundred bales of cotton, load her, and take it out of the confederacy. He afterwards told me that he had found out that the military authorities of the confederates were watching so very close that he would have to carry out the cotton in the first place to Havana, and then, when he got free control of it, he should take it to New York. I was to go on to New York with him. He commenced to build the boat about the 1st of March; I mean he began then to have his plans drawn, and I began to refit the machinery. The vessel was not on the stocks until May. He took a pair of old engines out of one of his steamers called the "Czar." I went to work on the pair of engines. I estimated the size of the steamer which the engines were capable of propelling, and we found that the vessel must be somewhat smaller than Captain Meaher at first expected. She was finally capable of taking only five hundred bales of cotton and some few other articles. I went on refitting the engine and machinery. In May the keel was laid of the vessel. He had the timber cut from his own land and sawed at his own mill. He purchased the rigging himself at Montgomery; he bought the iron himself at Selma—bolt and spike iron. The flag Captain Meaher had told me he had at home in his house; he told me he had kept it to fly on the ship after she was past the forts. After she was furnished, about the 10th day of December, 1863, she was brought from the mill down to Perry's cotton press. Meanwhile he had bought a good deal of cotton; enough with what he had raised to make up the cargo. She was loaded by Stevedore Cox. The cotton that was put on board was all of it Meaher's cotton; none of it was government cotton. She was loaded in about three days after she came down. After she was loaded there was a delay of some two weeks. An officer by the name of Myers,

in the ordnance department, came to Captain Meaher at the vessel and told him in my presence and others that belonged to the ship, that he could not take the cargo out without one-half of the proceeds belonging to the Government, and that if Captain Meaher did not comply he would put a Government crew on board. Captain Meaher hesitated nearly two weeks, and finally Meaher said that he could do no better; that the only way to save his property was to appear to accede to the proposition of the officer, and when he got out of the control of the confederates take his whole property and disregard any contract which he had made. I know this from personal conversation with him on the subject. When we got over Dog river bar, and could carry some more cargo, the water being deeper, Meaher got permission from Mr. Myers to put some more on board. Thirteen bales more were put on. This cotton Captain Meaher talked with me about taking. We needed it to trim the boat. He bought the thirteen bales of Jack Ingersoll. I know that Captain Meaher paid the entire export duty on the cargo of the Grey Jacket. I was present myself. He had trouble in getting gold, and paid in the coupons of the confederate government of the bonds known as the $15,000,000 cotton loan. He paid a little rising of $400. He paid the export duty about the 15th or 17th of December. He paid it at the custom-house.

We came down to Fort Morgan in the evening of the 30th of December, a heavy storm prevailing. The time of starting had to be fixed by the military authorities at the fort; we then started. We got over the bar at 7½ P. M. At the time she went over the bar she parted her steam-pipe. I reported to Captain Meaher that we were disabled, that we could use steam no longer, and he replied, "We will try and keep off the land till morning, and we would likely be assisted by the gunboats in the morning." We did not come to anchor, because we had no anchor nor chains sufficient to hold us in that storm. We repaired the steam-pipe, and reported to Captain Meaher at 12½ o'clock that night. We steamed then S. S. E. to keep clear of the land, carrying 40 pounds of steam. Our usual quantity of steam would be about 150 pounds. The 40 pounds enabled us to keep up steerage way, making some three or four miles, the storm still raging. Daylight came; nothing in sight; the vessel was laboring very heavy; we were afraid she would go to pieces or founder; we threw off sixty-four bales of cotton to lighten ship. At 10 o'clock A. M., 31st December, the Kennebec hove in sight. Captain Meaher held his course; there was no effort made to increase the steam; we were capable of

carrying full pressure at the time, but his orders were to keep steam enough to keep her off the land. The Kennebec set her colors; we answered by setting the Union flag at about half past 10. She fired a gun across our bows. We hove to; they came on board and took charge of the vessel and cargo. Nothing was thrown overboard except the sixty-four bales, which had been thrown overboard to lighten the vessel. The captain and crew, excepting two engineers, the mate and two men, were transferred to the Kennebec.

C. M. NEWBERRY.

Sworn and subscribed to, this 18th of April, 1864, before me.

K. LOEW,
Deputy Clerk.

{5 Cent U. S. Rev. Stamp.}

DEPOSITION OF CHARLES S. GRANT.

THE UNITED STATES

vs.

STEAMER GREY JACKET AND CARGO.

United States District Court Eastern District of Louisiana.

STATE OF LOUISIANA,
Parish of Orleans.

Charles S. Grant, being duly sworn, deposes and says:

I am thirty-three years of age. I was born in the town of Sodus, county of Wayne, and State of New York. I remained in my native town until I was eighteen years old, when I went to St. Louis. I remained West till 1851, when I went to Mobile, where I have since resided. I have been in the employ of Captain Timothy Meaher since 1851. I have been employed as an engineer, and in putting in the iron and machinery into his different boats which he has from time to time built and repaired. I am a single man, and have either lived with him or on his boats. Since the war broke out I have seen him almost daily. He has done nothing in aid of the rebellion or of the Confederate Government. He has held no office in any department of the Confederate Government, nor in the army or navy. Since the war broke out he has run a line of his boats from Mobile to Montgomery on the Alabama river. I know that he has at times been suspected of being a Union

man; (by that I mean a person favorable to the United States Government and opposed to secession.) I know he had at heart been always a strong Union man. His boat, a steamer, the "Republic," was once seized by the Confederate Government. It was in December, 1862, at Mobile. They had forbidden his playing "Hail Columbia" upon the calliope on said steamer. Captain Meaher played in spite of their directions. He was placed under arrest, and his steamer seized and taken down below the town and below the gunboats. He was kept confined for six or eight hours. He was released; I do not know how or through whose influence.

I knew well his situation as to money matters in 1863, in the month of February. He had steamboats, land, (including two plantations,) saw-mill, and a great deal of city property. He was reputed to be worth from $600,000 to $800,000. I think he was worth more.

Early in the summer of 1863 Captain Meaher began to buy cotton. He bought it at different points along the Alabama river, in lots of from fifteen to fifty bales. He bought at Washington, Ortoga county; some at Benton, Lowndes county; some at Selma, Dallas county; some at Cahawba, Dallas county; some at Bridgeport and Clifton, Wilcox county; and some at Gosport, Clarke county. He kept buying down to about the 1st of October, 1863. The cotton which he bought at those places he used to take in his boat, the "Roger B. Taney," of which he himself was captain. William Coghill was mate, and I was first engineer. This cotton was bought by him between the dates I have given above, and was stored by him in Perry's cotton press, which is situated in the extreme upper part of Mobile. I saw him buy this cotton, and either he or the clerk of the boat pay for it. The price which he paid for it was from thirty to forty-five cents per pound. Early in the season he bought at the price first named, but the price kept going up until, during the latter part of September, he had to pay as high as forty cents. For the last lot which he brought down he paid forty-five cents. He paid for it in Confederate money, in Confederate bills. He bought during this time a lot of cotton in Montgomery, of about one hundred and fifty bales, which he could not get. All of the cotton which he bought and collected during the summer of 1863 was about five hundred bales. This he stored, as he brought it to Mobile, in Perry's cotton press.

In May, 1863, Captain Meaher began to build a large steamer, which he afterwards called the Grey Jacket. In September, 1863, I was transferred from the "R. B. Taney" to the Grey

Jacket, and from that time I was assisting in putting up her machinery and in ironing the vessel down to the time of her completion, which was about the middle of November. At this time the Grey Jacket was taken from Meaher's mill, where it had been built, and was brought down to Perry's cotton press, where she was loaded. When coming down from the mill to the cotton press, she flew the Confederate flag. She never did it after she was past Fort Morgan.

The cotton was loaded on the Grey Jacket, from Perry's press. Ben. Cox, the stevedore, loaded the cotton. Captain Meaher superintended the loading. The mate, P. M. Flynn, was the receiving clerk.

I was to be and was the second engineer on the Grey Jacket on her trip out from Mobile. The vessel was bound to Havana. From there Captain Meaher was to ship the cotton to New York, and was to go there himself. At least he told me just before we started from Mobile, that I could go to New York with him if I wished to do so. It was my intention, however, to come from Havana to New Orleans.

Some two or three days before we left Mobile, I heard a conversation between Captain Meaher and his brother, James M. Meaher, in which it was agreed between them that James should send on to Havana Captain Meaher's wife and children as soon as he could find an opportunity. His wife and children were, upon their arrival at Havana, to place themselves under the care of the house of Santa Maria, with whom Captain Meaher was to make arrangements for them.

We were ready to sail on about the 15th of December, 1863, having commenced to load on about the 10th. The military authorities interfered and detained the Grey Jacket after she was loaded for about two (2) weeks. I did not know what the difficulty was, further than this, that the military made some demand upon Captain Meaher about the cotton on board the Grey Jacket, which he refused to comply with; that there was talk about our being discharged and government crew being put on board.

On the 30th of December, 1863, the Grey Jacket set sail from Mobile. There was a terrible storm raging, the heaviest there has been for two years. During the night of the 31st, at about seven o'clock, the steam-pipe parted. The rush of steam scalded me on my left arm and right ankle. This did not wholly disable me from doing my duty as second engineer. The steam-pipe was repaired a little past midnight. After the accident, and before she was repaired, the vessel could only make three or four knots per hour. Our whole effort was

to keep off the land. After the steam-pipe was repaired, and down to the time of the capture, she was capable of making ten miles per hour, but at no time did we make more than four knots per hour. In the morning the storm had not abated. We threw off some sixty bales of cotton to lighten her. At about half-past nine, on the morning of the 31st, the Kennebec hove in sight. He, Captain Meaher, told the steersman to keep her course. I heard the cry of "Sail ho!" when the Kennebec showed her colors. The Captain (Captain Meaher) said, "I am not afraid of that flag, though it has been long since it protected me." There was no increase of steam, and no attempt to increase it.

At ten the Kennebec came alongside; I was on deck. An officer from the gunboat came on deck and met the Captain. He asked what vessel it was. Captain Meaher replied, the Grey Jacket, and that she was from Mobile. Captain Meaher said to the officer, "I am a citizen of the United States, and I want my property protected;" that it was his vessel and cotton. The officer shouted to the Kennebec that it was the Grey Jacket, and was a prize. They took Captain Meaher and all the crew excepting two firemen, the other engineer, and myself and two men, and made them go on board the Kennebec. I aided in taking the Grey Jacket to Pensacola.

My purpose in leaving Mobile was to escape from the confederates and to come to New Orleans. I have taken the oath of allegiance under the proclamation of the President of December 8, 1863, and shall remain permanently under the protection of the Government of the United States.

CHARLES S. GRANT.

Subscribed and sworn to before me this 28th day of April, 1864.

K. LOEW,
Deputy Clerk.

{ 5 Cent U. S. Rev. Stamp. }

DEPOSITION OF S. W. ABELS.

THE UNITED STATES

vs.

THE GREY JACKET AND CARGO.

United States District Court, Eastern District of Louisiana.

STATE OF LOUISIANA, *Eastern District,* } *ss:*

S. W. Abels being duly sworn, deposes and says:

That he is forty-two years old. I was born at sea under the Bremen flag. My mother was a Philadelphian. I came to Philadelphia when I was six weeks or two months of age and lived there till I was thirteen years old, when I came to Alabama, to Mobile, where I have since resided. I am now living a part of the time at New York, and a part of the time at New Orleans. I have lived in Mobile twenty-eight years, and have known Captain Timothy Meaher ever since I came there. I know that he built the Grey Jacket himself, at his mill, three miles from Mobile.

Between Christmas, 1863, and New Year's day, 1864, I met Captain Meaher every day. At these interviews we had confidential talks. We were both in the same situation, trying to get out our property from Mobile and take it to the North. We were both loyal Union men. Captain Meaher asked me if there was any doubt but that the United States authorities would understand his situation, and protect him and his property when he got to them. I told him there would be no doubt about it. He told me that the Confederate government had tried to have him carry out their cotton; that in October they had offered him liberal terms, but that he had declined their offer, and was going to carry out a cargo, every pound of which was his own; that just as he got ready to sail the authorities refused to let his vessel go unless he would agree to give them one-half of the proceeds of his cargo; that he had to agree to this or give up his whole plan. I told him to pay no attention to that agreement when he was outside of Fort Morgan; to state the whole story to the United States Government, and they would take care of him. He said that that was the plan which he had determined upon. He was to take his cotton and steamer to Havana, and from there to New

York. I came out from Mobile with cotton which belonged to me. I have taken the oath of allegiance under the proclamation of December 8, 1863.

S. W. ABELS.

Sworn and subscribed before me this 2d day of May, 1864.

K. LOEW,
Deputy Clerk.

{ 5 Cent U. S. Rev. Stamp. }

DEPOSITION OF WILLIAM COGHILL.

THE UNITED STATES

vs.

THE STEAMER GREY JACKET, HER APPAREL, TACKLE, AND CARGO.

United States District Court, Eastern District of Louisiana.

STATE OF LOUISIANA, }
Parish of Orleans. }

William Coghill, being duly sworn, deposes and says:

I am a loyal citizen of the United States of America, and have ever been such. I have for the past five years lived in Mobile, Alabama, down to February 6th in the current year, when I escaped to New Orleans, to the protection of the Government of the United States, under which I shall permanently remain.

I have seen Captain Tim. Meaher during the rebellion as often as once a week, and almost every day usually. I sailed with him, he being captain and I being mate, on board the "R. B. Taney," which made regular trips during the summer of 1863 between Montgomery and Mobile. As far as I know, Captain Meaher has taken no part in the rebellion. If he had done so I am sure I should have known it. He has held no military, nor naval, nor civil office under the so-called Confederate Government. If he had done so I must have been aware of it. I know that Captain Meaher built the Grey Jacket; he built it at his own mill; that he got out his own lumber for it. I carried to his ship-yard materials for the vessel under his directions. These materials belonged to him. I was with him when he bought the rigging for the Grey Jacket. He bought it in Montgomery, in the summer of 1863. The steamer Grey Jacket was started in May, 1863, and was

launched early in November, 1863. While I was on his boat, the "R. B. Taney," he bought cotton at various points on the Alabama river. He bought some at Montgomery, some at Selma, in Dallas county, some at Bridgeport, in Wilcox county, some at Clifton, in the same county, and some at Gosport, in Clark county. This cotton was collected by me as he bought it, from the points at which he purchased it, and was put on board the "R. B. Taney," of which he was owner and captain, and was taken to Mobile. I saw most of it loaded, and after its arrival at Mobile, unloaded and stored. The lots were sometimes ten or twelve bales, and sometimes fifty bales. He began to buy early in the summer, and continued to buy down to the 1st of October. That from Montgomery he never could get out. He had to procure the consent of some Confederate officer for taking it out, who refused to let him take it to Mobile. He bought, collected, and brought to Mobile, during last summer, over five hundred bales; as fast as he brought to Mobile, was stored in Perry's cotton press. I know that he paid for the cotton; some he bought for thirty cents per pound, and later for some he paid forty cents. The price ranged between thirty, and not much above forty cents per pound.

W. R. COGHILL.

Sworn and subscribed before me this 4th day of May, A. D. 1864.

K. LOEW,
Deputy Clerk.

{ 5 Cent U. S. Rev. Stamp. }

DEPOSITION OF EDWARD K. MOONEY.

THE UNITED STATES

vs.

THE STEAMER GREY JACKET, HER TACKLE, APPAREL, FURNITURE, AND CARGO.

The District Court of the United States, Eastern District of Louisiana.

STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

Edward K. Mooney being duly sworn, deposes and says: I am a native and resident of the town of New Castle, in the

State of Maine, and am thirty-eight years of age; I have known Captain Timothy Meaher for the past fifteen years, and have known his family since I was a boy; his birth-place was at Whitefield, in Lincoln county, Maine, about sixteen miles from my said residence.

I have known Captain Meaher and his reputation, down to the breaking out of the rebellion, both in Maine and in Mobile; he bore a most excellent reputation, and among other worthy qualities, was remarkable for a most tender devotion to his mother, who is aged and still living at Whitefield.

I have known Captain Meaher's sentiments and convictions on the subject of the war since it broke out down to eight or ten months ago; I know them from letters which he has written to his friends in Maine, which I have read or heard read there at the time when they were received, and from what people who are common friends to him and myself, and who have kept up a correspondence with him, have told me; he has been throughout the war an unflinching Union man, and has had no sympathy with secession. A little more than a year ago his mother heard from him that he was getting his affairs into such a state as to allow him to get away and bring his family with him to the old place in Maine; he was trying to get away from the Confederacy, and his friends in Maine have been expecting for the past year that he would come there just as soon as he could get away from the Confederate authorities with his property.

Those who know him in Maine, and he is widely known, sympathize deeply with him in his efforts to save his property from the grasp of the Confederates, and now in his efforts to prevent its forfeiture.

Prior to the breaking out of the war he was considered, both in Mobile and in Maine, a man of very great wealth.

EDWARD H. MOONEY.

Sworn and subscribed before me this 10th day of May, 1864.

K. LOEW,
Deputy Clerk.

{5 Cent U. S. Rev. Stamp.}

DEPOSITION OF ROBERT H. DIXEY.

THE UNITED STATES

vs.

THE GREY JACKET, HER APPAREL, TACKLE, FURNITURE, AND CARGO.

The United States District Court, Eastern District of Louisiana.

STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

Robert H. Dixey, being duly sworn, deposes and says:

I reside in New Orleans. I am a native of Marblehead, in the State of Massachusetts. I have known Captain Timothy Meaher for more than twenty years. In July, 1863, I was in Mobile. When this city was taken possession of by the authorities of the United States my family were in Mobile, and I went over after them. While I was there, at said time, I saw Captain Meaher. He then told me that he was building a steamer, a propeller, of about four or five hundred tons. I asked him if she was for sale. He said she was not. I asked him to allow me an interest in her. He said he could not let me have an interest in her; but he said he was going to take out his own cotton. I saw the steamer on the stocks. She was being built at his mill. I know that for years Captain Meaher has been reported to be a man of great wealth. He was for years reported to be worth several hundred thousand dollars. My belief is that he held no office of any kind under the Confederate Government, and that he has done nothing in aid of the rebellion, and that this is the only vessel which he has built since the war commenced.

R. H. DIXEY.

Sworn and subscribed before me this 7th day of May, 1864.

H. LOEW,
Deputy Clerk.

{5 Cent U. S. Rev. Stamp.}

DEPOSITION OF PATRICK M. FLYNN.

THE UNITED STATES

vs.

THE STEAMER GREY JACKET, HER APPAREL AND CARGO, TIMOTHY MAEHER, CLAIMANT.

ADMIRALTY PRIZE COURT, U. S. DISTRICT COURT, }
Eastern District of Louisiana. }

Patrick M. Flynn being duly sworn, deposes and says:

I am now forty-six years of age. I was born in Ireland. I came to Alabama about twenty years ago, and established myself in the city of Mobile, Alabama, where I continued to reside until I left that city as mate of the steamer Grey Jacket, the latter part of December, 1863, on the voyage on which that steamer was captured. I have known Captain Meaher, the master of the Grey Jacket, about fifteen years.

I was brought in as a prisoner, on board of the Grey Jacket, after her capture, and my depositions were received and taken to be used as evidence *in preparatorio*, in the above entitled case, about the 26th day of February last, 1864. The statements then made by me were true to the best of my knowledge and belief, and I now reaffirm the same; but inasmuch as I was examined on certain standing interrogatories, which did not refer to various matters which I am informed may be material to the proper decision of the case, if further evidence should be admitted in or by authority of the Supreme Court, in the future proceedings in the case, I now make the following additional statements.

I stated in my answer to the 7th interrogatory *in preparatorio*, that Captain Meaher was the owner of the vessel; and in my answer to the 12th interrogatory *in preparatorio*, that he was also the owner of the cargo with the Confederate States; and in my answer to the 14th interrogatory *in preparatorio*, I am represented as saying, that the vessel belonged to Captain Meaher & Brother, and that they also owned one-half of the cargo. This last statement is erroneous, and if made by me at the time, it was made through inadvertence, in consequence of my being so accustomed to writing the name of Captain Meaher with that of his brother, with whom he had been connected in business for many years, that I made use of the accustomed name of the firm I had been long familiar with, without remarking it; and I now repeat and say that the said

Captain Timothy Meaher was the owner, in his own name and right, of the vessel, and of the cargo of cotton.

In my answer to the fourteenth interrogatory, *in preparatorio*, I am represented as saying that Meaher & Bro. "owned half the cargo," and that "the balance was for Confederate Government accounts." This statement, standing by itself, would produce an erroneous impression, that the Confederate Government was the real owner of one-half of the cargo of cotton laded on the steamer Grey Jacket at the time of her departure from the port of Mobile; but this was not so. In my answer to the same interrogatory *in preparatorio*, I further said that "they (referring, through habit or inattention, to Meaher & Bro., instead of Captain Meaher alone) purchased the cargo with their own funds; the greater portion of the cotton was produced upon Meaher's lands;" and I now say that the entire cargo of cotton laded on the same steamer Grey Jacket, in the port of Mobile, and which was on board of her at the time of her capture, was the property of Captain Timothy Meaher before it was laded on the said steamer Grey Jacket; that no cotton furnished by the so-called Confederate Government, or owned by the so-called Confederate Government, in virtue of any purchase or of any payment made by the so-called Confederate Government for the same, was ever put on board of the said vessel; but that all the cotton laded on board of the same was the true and lawful property of the said Captain Tim. Meaher at the time it was laded on board of the said steamer; and that the so-called Confederate Government had no right, title, or interest in the said cargo but what could or might have grown out of the assent of the said Captain Meaher to allowing them, on compulsion, a right to claim one-half of the same, in consideration of the permission given him to leave the said port of Mobile, as mentioned in the close of my answer to the said fourteenth interrogatory *in preparatorio*.

And I further state that, before the said steamer Grey Jacket was entirely finished, the said Captain Meaher told me, whilst I was engaged in rigging her, preparatory to her being loaded, that it was his intention to load the said vessel with his own cotton, and to escape with it out of the Confederacy, and not to return.

This was a subject upon which we could not speak with safety, and the declaration of Captain Meaher was drawn out by my making a proposition to him to be allowed to take a certain interest in the vessel; in reply to which proposition,

and declining it, Captain Meaher then told me he did not wish to do it, as it was his purpose to not return with his vessel.

P. M. FLYNN.

Sworn and subscribed before me this 6th day of October, 1864.

K. LOEW,
Deputy Clerk.

{ 5 Cent U. S. }
{ Rev. Stamp. }

1863.
December 12th.

TIM. MEAHER.

Export duty on 500 bales cotton, - - -	338	00
" " " 13 " " - - -	8	00
	346	00

CUSTOM-HOUSE, MOBILE.

J. C. COLSSON,
Deputy Collector.

Copy per EANES.

DEPOSITION OF CHARLES S. GRANT.

No. 7,820.

THE UNITED STATES

vs.

THE STEAMER GREY JACKET, HER TACKLE, APPAREL, AND CARGO. TIMOTHY MEAHER, CLAIMANT.

United States District Court, Eastern District of Louisiana.

Charles S. Grant, being duly sworn, deposes and says, that he has already made an affidavit in the above entitled case, on or about the 28th day of April last, before K. Loew, deputy clerk of the said district court, which said affidavit, as he is informed and believes, has not yet been admitted among the proofs in the said case, and that he now reiterates and confirms what was stated in the said affidavit.

And the said Charles S. Grant further deposes and says, that he is informed and verily believes that the said Captain Timothy Meaher, on or about the 12th of December, 1863, at

the port of Mobile, in the State of Alabama, paid into the custom-house there the export duty on five hundred and thirteen bales of cotton, shipped on board of the said steamer Grey Jacket, and constituting the principal part of her cargo, at the departure of the said steamer from the said port of Mobile immediately preceding her capture, as required by the acts of Congress of the so-called Confederate States; that he is informed and believes that the paper hereto annexed, which contains written thereon the following words and figures, viz:

"1863.
December 12th.

TIMOTHY MEAHER.

Export duty on 500 bales of cotton, - - - - -	338 00
" " " 13 " " - - - - -	8 00
	346 00

CUSTOM-HOUSE, MOBILE.

J. C. COLSSON,
Deputy Collector."

is a true copy from the entry made at the time in the books kept in the said custom-house; and that the affiant was in the said custom-house, and saw the said paper, hereto annexed, given out, and delivered as a true copy of said entry, by an officer, or person acting as an officer, in the said custom-house, in the early part of the present month of September.

CHARLES S. GRANT.

Sworn to and subscribed before me this 12th day of October, 1864.

K. LOEW,
D'y. C'lk. U. S. Dist. Court, East. Dist. of La.

{ 5 Cent U. S. Rev. Stamp. }

UNITED STATES DISTRICT ATTORNEY'S OFFICE,
NEW YORK, 15*th July*, 1864.

In prize cases pending in the U. S. district court in this district, it is the practice after the claim is filed, the evidence taken *in preparatorio* is opened and a hearing had, to allow the claimant the privilege of offering further proof, when he claims

to have left the seceding States, with a view of giving up his residence therein, and for the purpose of renewing his allegiance to the United States Government, and that his object in running out his property to the blockading squadron was for the purpose of putting the same under the protection of the United States.

The above statement is made at the request of Messrs. Sullivan, Billings & Hughes, of New Orleans.

C. DELAFIELD SMITH,
U. S. Dist. Att'y at N. Y.

ACTS OF CONGRESS.

EXTRACT FROM ACT OF CONGRESS, JULY 13, 1861.

SEC. 5. * * * It may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof, where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from said State or section into the other parts of the United States, and all proceeding to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States: *Provided, however*, That the President may, in his discretion, license and permit commercial intercourse with any such part of said State or section, the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury. And the Secretary of the Treasury may appoint such officers at such places where officers of the customs are not now authorized by law as may be needed to carry into effect such licenses, rules and regulations; and officers of the customs and other officers shall receive for services under this section, and under said rules and regulations, such fees and compensation as are now allowed for similar service under other provisions of law.

SEC. 6. *And be it further enacted*, That from and after fifteen days after the issuing of the said proclamation, as provided in the last foregoing section of this act, any ship or vessel belonging in whole or in part to any citizen or inhabitant of said State or part of a State whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited to the United States.

SEC. 7. *And be it further enacted*, That in the execution of the provisions of this act, and of the other laws of the United

States providing for the collection of duties on imports and tonnage, it may and shall be lawful for the President, in addition to the revenue cutters in service, to employ in aid thereof such other suitable vessels as may, in his judgment, be required.

SEC. 8. *And be it further enacted*, That the forfeitures and penalties incurred by virtue of this act may be mitigated or remitted in pursuance of the authority vested in the Secretary of the Treasury by the act entitled "An act providing for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned," approved March third, seventeen hundred and ninety-seven, or in cases where special circumstances may seem to require it, according to regulations to be prescribed by the Secretary of the Treasury.

EXTRACT FROM ACT OF CONGRESS, AUGUST 6, 1861.

CHAP. LX.—*An Act to confiscate Property used for Insurrectionary Purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if, during the present or any future insurrection against the Government of the United States, after the President of the United States shall have declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney, or employé, shall purchase or acquire, sell or give, any property of whatsoever kind or description, with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting such insurrection or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned.

SEC. 2. *And be it further enacted*, That such prizes and captures shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty

in any district in which the same may be seized, or into which they may be taken and proceedings first instituted.

SEC. 3. *And be it further enacted*, That the Attorney General or any district attorney of the United States in which said property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts.

PROCLAMATIONS.

BLOCKADE.

By the President of the United States of America.

A PROCLAMATION.

Whereas an insurrection against the Government of the United States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and the laws of the United States for the collection of the revenue cannot be effectually executed therein conformably to that provision of the Constitution which requires duties to be uniform throughout the United States:

And whereas a combination of persons, engaged in such insurrection, have threatened to grant pretended letters of marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country lawfully engaged in commerce on the high seas, and in waters of the United States:

And whereas an Executive Proclamation has been already issued, requiring the persons engaged in these disorderly proceedings to desist therefrom, calling out a militia for the purpose of repressing the same, and convening Congress in extraordinary session to deliberate and determine thereon:

Now, therefore, I, Abraham Lincoln, President of the United States, with a view to the same purposes before mentioned, and to the protection of the public peace, and the lives and property of quiet and orderly citizens pursuing their lawful occupations, *until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased, have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and of the law of nations in such case provided.* For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave either of the said ports, she will be duly warned by the commander of one of the blockading vessels, who will indorse on her register the fact and date of such warning, and if the same vessel shall again

attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo as prize, as may be deemed advisable.

And I hereby proclaim and declare that if any person, under the pretended authority of the said States, or under any other pretence, shall molest a vessel of the United States, or the persons or cargo on board of her, such person will be held amenable to the laws of the United States for the prevention and punishment of piracy.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this nineteenth day of
[L. S.] April, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States the eighty-fifth.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, *Sec'y of State.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION ENFORCING ACTS OF FORFEITURE.

Whereas, on the fifteenth day of April, eighteen hundred and sixty-one, the President of the United States, in view of an insurrection against the laws, Constitution, and Government of the United States, which had broken out within the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and in pursuance of the provisions of an act, entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, and to repeal the act now in force for that purpose," approved February twenty-eight, seventeen hundred and ninety-five, did call forth the militia to suppress said insurrection, and to cause the laws of the Union to be duly executed, and the insurgents have failed to disperse by the time directed by the President; and whereas such insurrection has since broken out, and yet exists within the States of Virginia, North Carolina, Tennessee, and Arkansas; and whereas the insurgents of all the said States

claim to act under the authority thereof, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which such combinations exist, nor has such insurrection been suppressed by said States:

Now, therefore, I, ABRAHAM LINCOLN, President of the United States, in pursuance of an act of Congress approved July thirteen, eighteen hundred and sixty-one, do hereby declare that the inhabitants of the said States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, and Florida, (except the inhabitants of that part of the State of Virginia lying west of the Alleghany mountains, and of such other parts of that State and the other States hereinbefore named as may maintain a loyal adhesion to the Union and the Constitution, or may be, from time to time, occupied or controlled by forces of the United States engaged in the dispersion of said insurgents,) are in a state of insurrection against the United States, and that all commercial intercourse between the same and the inhabitants thereof, with the exceptions aforesaid, and the citizens of other States and other parts of the United States is unlawful, and will remain unlawful until such insurrection shall cease or has been suppressed; that all goods and chattels, wares, and merchandise, coming from any of said States, with the exceptions aforesaid, into other parts of the United States, without the special license and permission of the President, through the Secretary of the Treasury, or proceeding to any of said States, with the exceptions aforesaid, by land or water, together with the vessel or vehicle conveying the same, or conveying persons to or from said States, with said exceptions, will be forfeited to the United States; and that from and after fifteen days from the issuing of this proclamtion, all ships and vessels belonging in whole or in part to any citizen or inhabitant of any of said States, with said exceptions, found at sea, or in any port of the United States, will be forfeited to the United States; *and I hereby enjoin upon all district attorneys, marshals, and officers of the revenue, and of the military and naval forces of the United States, to be vigilant in the execution of said act, and in the enforcement of the penalties and forfeitures imposed or declared by it; leaving any party who may think himself aggrieved thereby to his application to the Secretary of the Treasury for the remission of any penalty or forfeiture, which the said Secretnry is authorized by law to grant if, in his judgment, the special circumstances of any case shall require such remission.*

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this sixteenth day of August, in the year of our Lord, eighteen hundred and [L. S.] sixty-one, and of the independence of the United States of America the eighty-sixth.

ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, *Secretary of State.*

A PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, DECEMBER 8, 1863.

* * * Whereas it is now desired by some persons heretofore engaged in said rebellion to resume their allegiance to the United States, and to reinaugurate loyal State governments within and for their respective States: Therefore,

I, Abraham Lincoln, President of the United States, do proclaim, declare, and make known to all persons who have directly, or by implication, participated in the existing rebellion, except as hereinafter excepted, that a full pardon is granted to them, and each of them, with restoration of all rights of property, except as to slaves, and in property cases where rights of third parties shall have intervened, and upon the condition that every such person shall take and subscribe an oath, and thenceforward keep and maintain said oath inviolate, and which oath shall be registered for permanent preservation, and shall be of the tenor and effect following, to wit:

"I, —— ———, do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of the States thereunder; and that I will, in like manner, abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court; and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebel-

lion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court. So help me God."

The persons excepted from the benefit of the foregoing provisions are all who are, or shall have been, civil or diplomatic officers or agents of the so-called Confederate government; all who have left judicial stations under the United States to aid the rebellion; all who are, or shall have been, military or naval officers of said so-called Confederate government above the rank of colonel in the army or of lieutenant in the navy; all who left seats in the United States Congress to aid the rebellion; all who resigned commissions in the army or navy of the United States and afterwards aided the rebellion; and all who have engaged in any way in treating colored persons, or white persons in charge of such, otherwise than lawfully as prisoners of war, and which persons may have been found in the United States service as soldiers, seamen, or in any other capacity.

OPINION OF MR. JUSTICE NELSON.

THE UNITED STATES *vs.* THE SCHOONER GEN. C. C. PINCKNEY AND CARGO.

UNITED STATES CIRCUIT COURT,
Southern District of New York, } 88.

NELSON, C. J.—The schooner in this case was captured at the entrance of the harbor of Charleston, S. C., on the morning of the 6th May, 1862, while on her way to Nassau, N. P. She was of some thirty-eight tons burden, and had on board ninety-four bales of cotton and some ten barrels of rosin, the effects of the claimant, who was a tailor in Charleston, and had invested them in the vessel and cargo with the intent of escaping from the confederate States and going to New York.

He had previously sent his wife to Nassau, his family consisting of himself and wife.

He left Charleston with a full knowledge of the blockade of the port, and with the intent of giving himself up to the blockading squadron as the only mode of escape from the city. This intent was made known to several persons, some of whom were on board the vessel.

The further proofs in this case in this court place the fact beyond all reasonable doubt that the claimant left Charleston with the intent to withdraw from the enemy's country with his effects, and for this purpose had converted them into the vessel and the two articles constituting the cargo on board. He was obliged to make Nassau his port of destination, or he would not have been permitted to leave the enemy's port. I think the case is brought fairly within the rule, which has been applied in several cases, that the withdrawal of the property under the circumstances stated does not subject it to capture as enemy's property.

Decree below reversed.

All of which we have caused by these presents to be exemplified, and the seal of the said circuit court to be hereunto affixed.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New

York, in the southern district of New York, this fourth day of June, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

(Signed,) KENNETH G. WHITE,
Clerk.

I, Samuel R. Betts, judge of the said circuit court, do hereby certify that the foregoing exemplification is in due form of law.

(Signed,) SAML. R. BETTS.

LETTER OF THE SECRETARY OF THE TREASURY EXPLAINING THE ACT OF JULY 13, 1861.

TREASURY DEPARTMENT, July 9, 1861.

SIR: I have the honor to acknowledge the receipt of your communication of the 8th instant, requesting my views in detail of the provision of the "bill further to provide for the collection of duties on imports, and for other purposes."

The existing condition of things on the Mississippi river and its tributaries, is an illustration of the propriety of the provisions of the final section of the bill. The port of entry is New Orleans, and the ports of delivery are St. Louis, Louisville, Cincinnati, Pittsburg, Wheeling, and others. Duties under existing laws can be assessed only at New Orleans. They may be collected at the ports of delivery. All the officers necessary for the assessment of duties on imports, such as appraisers, weighers, gaugers and measurers, reside at New Orleans; but none such are authorized at ports of delivery.

If the duties are not ascertained at New Orleans, there is no power or means of ascertaining them elsewhere, and the first section of the bill provides for that exigency by giving such power to the surveyor at the port of delivery as will enable him to perform all the duties of a collector in reference to any foreign merchandise which may arrive at his port without being duly entered, and duties ascertained at the port of entry. The other provisions of that section are necessary to enable the surveyors to discharge the duties of collectors under the laws regulating the coasting trade and the warehousing of imports.

The provisions of the second and third sections of the bill are, in substance, those of the first section of the act of 2d

of March, 1833, entitled "An act further to provide for the collection of duties on imports," and are designed to provide for the emergency contemplated in that act. They do not seem to require any special comment, except to state that an option is given to the master of a vessel arriving with foreign merchandise, or owner or consignee of the cargo, (not given in the act of 1833,) either to pay duties to the collector on ship-board, or to enter at some other port where the duties may be collected in the ordinary way. The connection between the courts of the State and the United States being broken, the provision confining the issuing of process interfering with the vessel and cargo in the custody of the collector, to the courts of the United States, would seem to be proper, and, indeed, necessary, to the collection of the revenue in the mode proposed.

The fourth section of the bill gives to the President the power to close a port of entry whenever the duties cannot be collected in the ordinary way, or without too serious inconvenience and difficulty in the modes provided in the previous sections of the bill. The right to prescribe at what points commerce shall be carried on and duties collected, has been exercised by Congress since the origin of the government in all the various laws creating collection districts and ports of entry and delivery. This section merely vests the President with the power, when it is impracticable or extremely difficult to collect duties at a port of entry, to suspend the privilege of importation at that point, giving due notice of such suspension, and restoring the privilege when the emergency shall have ceased. In the condition of things contemplated in the fourth section, no other course would seem to be open without a practical abandonment of efforts to collect the revenue.

The fifth and sixth sections of the bill refer to the same subject-matter, or contemplate an organized insurrection against the United States, embracing a State or a part of a State. To permit, under such circumstances, commerce to flow uninterrupted in its accustomed channels, would only add strength to the rebellion. Its total cessation would bring with it a full sense of the loss and inconvenience to which their position subjects them. Being in a state of declared hostility to the United States, the property of the insurgents, and all property proceeding to their relief, would be liable to confiscation. But there may be individuals or sections of a State so in insurrection that may entertain loyal sentiments; and to meet this contingency, it would seem proper to vest

the President with the power to permit, by special license, commercial intercourse to be maintained with such individuals or sections; and such a provision is accordingly inserted in the fifth section. It will be perceived, by reference to the sixth section, that ample notice is to be given before vessels belonging to inhabitants of States in insurrection can be seized for forfeiture.

For the prompt and faithful execution of the provisions of this bill, should it become a law, and of existing laws regulating the collection of duties, it is deemed expedient, as provided in the seventh section, that the President be authorized to employ other vessels in addition to the revenue cutters now in service. In view of the superior efficacy of steam vessels as revenue cutters and coast-guards, it would be desirable that such power should be conferred on the President as will enable him to procure vessels of that description also for the public service.

The propriety of the remaining provisions of the bill giving to the courts of the United States in any district jurisdiction over the penalties and forfeitures, and providing for their remission, is believed to be too apparent to require explanation or remark.

I have the honor to be, very respectfully,

S. P. CHASE,
Secretary of the Treasury.

Hon. E. B. WASHBURNE, *Chairman Committee on Commerce, House of Representatives.*

THE RIGHTS OF THE CROWN IN CAPTURES AS PRIZE.

The Elsebe—5 *Rob.*, 181.

It is admitted on the part of the captors, whose interests have been argued with great force, * * that their claim rests wholly on the order in council, the proclamation, and the prize act. It is not (as it cannot be) denied, that, independent of these instruments, the whole subject-matter is in the hands of the Crown, as well in point of interest as in point of authority. Prize is altogether a creature of the crown. No man has, or can have, any interest but what he takes as the mere gift of the crown. Beyond the extent of that gift he has nothing. This is the principle of law on the subject, founded on the wisest reasons. The right of mak-

ing war and peace is exclusively in the crown. *The acquisitions of war belong to the crown*, and the disposal of these acquisitions may be of the utmost importance for the purposes both of war and peace. This is no peculiar doctrine of our Constitution; it is universally received as a necessary principle of public jurisprudence by all writers on the subject. *Bello parta cedunt republicæ.* It is not to be supposed that this wise attribute of sovereignty is conferred without reason; it is given for the purpose assigned, that the power to whom it belongs to decide in peace or war may use it in the most beneficial manner for the purposes of both. A general presumption arising from these considerations is, that the government does not mean to divest itself of this universal attribute of sovereignty conferred for such purposes, unless it is so clearly and unequivocally expressed. The *jus persequendi* is not a right conveyed, but a duty enjoined.

But I must say that when it is alleged that all former cases have passed by consent, the fact itself that the power was not questioned in these cases affords strong proof that the power was unquestionable; and I must add that though I have suffered a party to stand before the court for the purpose of arguing the question, I do not know the party who can legally stand before it, praying a condemnation to the crown, which the crown itself publicly renounces.

CASE FROM PAPER-BOOKS OF APPEAL TO THE LORDS.

THE GUANA.—(*Prize Cases in War, vol.* 1, *p.* 1.)

The ship, 25 hhds. tobacco, some indigo, rice, and turpentine, were claimed by James Keith; 6 hhds. tobacco and some indigo was the propertyof a passenger, James Grant; two hhds. tobacco, the property of Henry Michie; and two casks indigo, the property of Hugh McGibbon, a passenger—all claimants and natives of Scotland.

Keith settled in South Carolina in 1750; remained true to the crown; and when the legislature of South Carolina passed an act requiring residents to take an oath of allegiance to the State of South Carolina and renounce their allegiance to Great Britain, Keith prepared to leave, although he did not in fact leave until after the time granted in the

act. He invested his means in this ship, and the tobacco, indigo, rice, and turpentine belonging to him; took on board the other claimants as passengers, with their freight; cleared for St. Eustatia, May 29th, 1778; sailed June 8th, 1778; changed her course for Jamaica; arrived there July 6, 1778, where she was immediately seized by the *Minerva*. A libel was filed in the court of admiralty for Jamaica, and the vessel, on hearing, condemned.

The reasons assigned by Wynne & Weddeburn, counsel for the captors and respondents, were:

"Because the act of Parliament prohibiting all trade and intercourse with the American colonies in rebellion, expressly declares that from and after the 1st day of January, 1776, all ships and vessels belonging to the inhabitants of the said colonies, together with their cargoes, &c., which shall be found coming from trading in the said colonies, shall become forfeited to his Majesty, as if the same were the ships and effects of open enemies, and shall be so adjudged, decreed, and taken in all courts of admiralty, and in all other courts whatsoever; and the claimants in this case, being all inhabitants of one of the said colonies, on said 1st January, 1776, and having continued inhabitants thereof until the 8th day of June, 1778, and being taken coming from trading in the said colonies, are already included in the penalties of said act, and the ship and cargo liable to confiscation."

The "reasons" assigned by Bevan and Mackdonald, for the claimants, were:

1. Because the prohibitory act being expressly designed to prohibit all trade and intercourse with the colonies in rebellion, it is humbly conceived, that upon the general principles of all penal laws, it can only be extended to those who, in defiance of that act, still continue to acknowledge the authority of the said pretended State.

2. Because it is clearly in evidence that the appellants had been obliged to quit the country in consequence of their open profession of allegiance to the crown of Great Britain, and of their refusal to take the oath of allegiance to the rebel State of South Carolina, and that they would be subject to death should they ever return.

3. That the defective manner in which the ship was documented, plainly shows that it was not freighted for the purpose of trade, there being neither manifest nor bill of lading on board, but that the truth was, that the respective owners

of the ship and cargo had no other design in view than to collect the scattered remnants of their fortune in order to put themselves under the protection of his majesty's Government, from all of which circumstances it is humbly conceived that their cases are highly favorable and compassionate, and are necessary exceptions arising from the nature of the law itself.

DECREE, *March* 18, 1780.

An objection having been made by the respondent to reading of the deposition taken on special interrogatories in the first instance, the lords having heard counsel thereon, by consent of the parties, admitted the said depositions to be read, and having heard counsel on the merits, by their interlocutory decree, reversed the sentence of the judge below condemning the ship and not of the cargo, and decreed the same to be restored, or the value thereof to be paid to the claimant, &c.

CASE OF THE AMAZON.

LETTER OF CHARLES GILPIN, ESQ.—OPINION OF JUDGE CADWALADER.

OFFICE OF U. S. ATTORNEY, EASTERN DISTRICT OF PENNA.,
PHILADELPHIA, *December* 9, 1865.

J. HUBLEY ASHTON, Esq., *Assistant Attorney General:*

SIR: I take occasion to refer you to some cases of remission of forfeitures and condemnations in this district by the honorable Secretary of the Treasury:

Schooner M. A. Shindler, 1861;
Schooner George W. Hynson, 1861;
(occurring before my official term.)
Steamer Florida, 1864;
(concluded after I came into office.)
Cargo of sloop Cyclops, 1864;
Sloop Persis and cargo, 1864;
Steamer Amazon, 1865;

the papers relating to all of which cases will be found on file in the Treasury Department. There was remission in all the cases except of the Persis and cargo. From the report of the judge made in this case I extract the following:

"In the case of the Florida, on which I reported in May last, the decision was that the Secretary of the Treasury could exercise the jurisdiction as to a *vessel* condemned as the property of an inhabitant of one of the revolted States. In the case of the Cyclops, the jurisdiction was afterwards exercised as to a *cargo* of like ownership, which had been taken out of the port of such a State for the sole purpose of a surrender to the United States. In the present case the departure from the hostile port was not with any such preconceived design. As to the vessel, this distinction could not make the decision of the present case different from that in the case of the Florida, because the sixth section of the act of 13th of July, 1861, applies alike to every vessel belonging to an inhabitant of the revolted States which is found at sea, whatever may have been her destination. As to the cargo, the precedent in the case of the Cyclops does not apply if the decision of that case depended entirely upon the provisions of the fifth section of the same act. These provisions apply only to merchandise in

transit by land or water from a revolted State to other parts of the United States.

"But I am of opinion that the jurisdiction of the Secretary of the Treasury may be exercised as to the cargoes of vessels captured at sea without any distinction as to their destination, if their ownership is actually or constructively hostile.

"The captured vessel of such ownership is confiscable and must be brought into port for adjudication. The cargo of such ownership captured in her must accompany her, and cannot, in any event, be judicially restored to an inhabitant of the hostile State. The cargo, if of such ownership, constitutes part of the prize, and is confiscable accordingly.

"Now, the ninth section of the act, providing that the judicial proceedings to enforce the forfeiture shall be against the *property seized*, excepts no part of it, and warrants the condemnation of the whole, if the whole is, for any reason, confiscable. The eighth section extends to all forfeitures incurred under the act. I do not think its words improperly enlarged by applying them to all judicial forfeitures which may result from seizures made under the act.

"That a capture of a vessel under the act was also a valid capture under the law of war, independently of the act, should not alter the effect of the eighth and ninth sections. The purpose of the act, as to captures at sea, was to preclude the necessity of sustaining them on the foundation of belligerent prize-right, but not to prevent them from being also sanctioned under this prize jurisdiction, when they might be lawful under it independently of the act. An interpretation limiting the enactment of the eighth section to cases not of prize jurisdiction would, I think, be too narrow.

"I am therefore of opinion that the Secretary of the Treasury may entertain the application, however it may be decided on its merits; and that consequently my duty requires me thus to report the facts."

I concur entirely in the opinion expressed above by the learned judge. If the facts as reported in the case of the Amazon be examined, her case will be found to be fully covered by the opinion of the judge.

Very respectfully, your obedient servant,

CHARLES GILPIN,

United States Attorney.

CASE OF THE CYCLOPS.

COPY OF WARRANT OF REMISSION OF FORFEITURE OF THE CARGO OF THE SLOOP "CYCLOPS" BY MR. SECRETARY FESSENDEN.

To all to whom these Presents shall come:

I, WILLIAM P. FESSENDEN, Secretary of the Treasury of the United States, send greeting:

Whereas a statement of facts bearing date the 14th day of September, A. D. 1864, with the petition of Stephen Campbell and James Cassidy thereto annexed, touching a certain forfeiture of fifteen (15) bales of cotton, the cargo of the sloop "Cyclops," incurred under the statute of the United States entitled "An act further to provide for the collection of duties on imports, and for other purposes," approved July 13, 1861, under the fifth section thereof, has been transmitted to the Secretary of the Treasury by the judge of the United States district court for the eastern district of Pennsylvania, pursuant to the statute of the United States entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned," as by the said statement of facts and petition remaining in the Treasury Department of the United States may fully appear;

And whereas I, the said Secretary of the Treasury, having maturely considered the said statement of facts and petition, and it appearing to my full satisfaction that the said forfeiture was incurred without any intention of fraud, or any act of disloyalty on the part of the petitioners, and that, although said fifteen bales of cotten were condemned by said court generally as prize of war, said statement of facts nevertheless clearly shows that said forfeiture was actually incurred under said act of July 13, 1861, and, therefore, that the Secretary of the Treasury is invested with the power to remit the same:

Now, therefore, know ye, That the said Secretary of the Treasury, in consideration of the premises, and by virtue of the power and authority to me given by the said first-mentioned statute, and by said act of July 13, 1861, do hereby decide to remit to the petitioners all the right, claim, and demand of the United States to the said forfeiture, upon the

conditions following, viz: First, that from the proceeds of the sale of said cotton shall be first paid all costs of court in the proceedings for condemnation, and the costs and expenses incident to the summary examination, including such fee to the United States district attorney as shall be allowed by the court; second, that any sum which may be found to be of right due to the master of said sloop "Cyclops," by reason of any service which he may have rendered in or about the transportation of said cotton, shall also be paid out of said proceeds.

Given under my hand and seal of office in the city of Washington, the 5th day of November, in the year of our Lord one thousand eight hundred and sixty-four, and the eighty-ninth year of the independence of the United States.

[SEAL.]

(Signed,) W. P. FESSENDEN,
Secretary of the Treasury.

CASE OF THE STEAMER FLORIDA.

To the honorable JOHN CADWALADER, *Judge of the United States for the Eastern District of Pennsylvania.*

The petition of Benjamin Richards, Henry R. Benkard, Benjamin Richards, Jr., Robert L. Taylor, Ruth O. Delamater, William S. Whitlock, Elisha S. Whitlock, John A. Mitchell, and Charles Pratt, showeth:

That your petitioners now are, and always have been, native and good and loyal citizens of the United States, residing respectively in the States of New York and Rhode Island, as follows, viz: the said Benjamin Richards, Henry R. Benkard, Benjamin Richards, Jr., Robert L. Taylor, Ruth O. Delamater, William S. Whitlock, Elisha S. Whitlock, and Charles Pratt in the State of New York, and the said John A. Mitchell in the State of Rhode Island.

That at the time of the capture of the steamer Florida, hereinafter mentioned, your petitioners were also owners of undivided shares and interests in the said steamer in the following proportions, severally, to wit: the said Benjamin Richards individually of one-eightieth part thereof; the said Benjamin

Richards, Henry R. Benkard, and Benjamin Richards, Jr., in conjunction and as members of the mercantile firm of Richards, Benkard & Co., transacting business at the city of New York, of two-eightieth parts thereof; the said Robert L. Taylor of two-eightieth parts thereof; the said Ruth O. Delamater of five-eightieth parts thereof; the said William S. Whitlock of one-eightieth part thereof; the said Elisha S. Whitlock of two-eightieth parts thereof; the said John A. Mitchell of ten-eightieth parts thereof; and the said Charles Pratt of two-eightieth parts thereof; and that your petitioners were so interested in the said steamer, in the proportions aforesaid, as corporators and stockholders of the Apalachicola and New Orleans Steam Navigation Company, a corporation duly incorporated under an act of the Legislature of the State of Florida, passed on or about the 17th day of December, 1859.

That up to and at the time of her said capture, the said steamer Florida constituted the only property of the said Apalachicola and New Orleans Steam Navigation Company, and was purchased during the years 1859 at a cost of fifty thousand dollars, or thereabouts; and that the entire value of the said shares so held and owned by your petitioners, as aforesaid, in the capital stock of the said corporation, was represented by the said steamer, her tackle, apparel, and furniture.

That in or about the month of April, 1862, the said steamer Florida was captured while lying in St. Andrew's bay, Florida, by two boats' crews, sent from the United States barque Pursuit, then performing blockading duty at St. Joseph's bay in that State, and from thence was brought into the port of Philadelphia, and thereupon was libelled on behalf of the Government in the District Court of the United States for the Eastern District of Pennsylvania, as the property of enemies of the United States, and as having been used and employed, since the issuing of the President's proclamations of the 19th and 27th days of April, 1861, for insurrectionary purposes, and in giving aid and comfort to the enemies of the United States, as aforesaid, and as confiscable as such to the use of the said Government; and that afterwards, and on or about the day of , the said steamer was, in pursuance of the said libel and the proceedings instituted thereon, by the judgment of the said District Court, duly condemned and adjudged to be forfeited to the United States as lawful prize.

That since the breaking out of hostilities between the Government of the United States and the several States of the confederacy now in rebellion against the said Government,

your petitioners have not, nor has either of them, exercised any control whatever over the acts of the said corporation or the employment of the said vessel.

That, as your petitioners have also been informed and verily believe, a pretended sale of the said steamer has, since the breaking out of hostilities as aforesaid, been made by the president and certain of the directors of the said Apalachicola and New Orleans Steam Navigation Company to one Richard Bartlett Sumner, a resident of the enemies' country; but that, as your petitioners are informed and verily believe, from all the circumstances of the case, such sale was fictitious and colorable, and was made for the purpose of facilitating the placing of the title to the property in the name of a neutral person, with a view to protect it from seizure and forfeiture by the United States; and that, as your petitioners are advised and verily believe, the real ownership of the said steamer never passed from the said corporation by the said sale or otherwise.

That, as your petitioners have also been informed and verily believe, their interests in the said steamer Florida as corporators, respectively, of the said corporation, were, at or about the time of the above-mentioned pretended sale, confiscated and declared forfeited by the so-called Confederate government to its own use, on account of the residence of your petitioners in the States of New York and Rhode Island as aforesaid and their loyalty and adhesion to the Government of the United States.

Your petitioners further show that, under the advice of counsel they admit, for the purposes of this petition, that the said forfeiture has been incurred.

They further show that, pending the said proceedings, the said steamer was duly appraised, and valued by the appraisers at the sum of forty thousand dollars, at which valuation she was taken by the Government and the amount thereof paid into the registry of the court, to abide the judgment and distribution of the court; where it still remains subject to the order of the court.

Wherefore your petitioners respectfully pray, that your honor will inquire in a summary manner into the circumstances of the case, and cause the facts which shall appear upon said inquiry to be stated and annexed to this their petition, and direct their transmission to the Secretary of the Treasury of the United States; to the end that he may remit the said forfeiture to the extent of the interests of your petitioners therein respectively as corporators and stockholders of the

Apalachicola and New Orleans Steam Navigation Company as above set forth, upon such terms and conditions as he may deem reasonable and just, according to the statute in such case made and provided.

BENJ. RICHARDS,
HENRY R. BENKARD,
ROBERT L. TAYLOR,
WM. S. WHITLOCK,
ELISHA S. WHITLOCK,
JOHN A. MITCHELL,
by BENJ. RICHARDS, attorney,
CHARLES PRATT,
by BENJ. RICHARDS, attorney,
BENJ. RICHARDS, JR.,
R. O. DELAMATER,
by GEORGE W. STEVENS, atty.

Benjamin Richards, Henry R. Benkard, Robert L. Taylor, William S. Whitlock, Elisha S. Whitlock, Benjamin Richards, Jr., and George W. Stevens being duly sworn according to law, depose and say, that the facts contained in the above petition are true to the best of their knowledge and belief.

BENJ. RICHARDS,
HENRY R. BENKARD,
ROBERT L. TAYLOR,
WM. S. WHITLOCK,
ELISHA S. WHITLOCK,
BENJ. RICHARDS, JR.,
GEORGE W. STEVENS.

Sworn to before me this 17th day of May, 1864.

G. S. HUTCHINSON,
[L. S.] *A Commissioner in New York*
for the State of Pennsylvania.

DISTRICT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

May 19, A. D., 1864. And now upon the view of the foregoing petition and the letters of the late George A. Coffey, Esquire, attorney of the United States, and of J. Hubley Ashton, Esquire, formerly assistant attorney of the United

States for this district, reporting the facts in the case, and the agreement of counsel that the facts are as stated in the said petition and letters, (which letters and agreement of counsel are hereunto subjoined,) I certify that it appears to me that the facts are as they are set forth in the said letters, which I adopt as my report thereof.

JOHN CADWALADER,
District Judge.

[B.]

OFFICE OF U. S. ATTORNEY FOR THE
EASTERN DISTRICT OF PENNSYLVANIA,
PHILADELPHIA, *June* 1, 1863.

Hon. SALMON P. CHASE, *Secretary of the Treasury:*

SIR: The bearer of this note is William H. Scott, Esq., counsellor at law.

Mr. Scott appeared in the prize court in this district, claiming a share of the proceeds of the prize steamer Florida. This steamer, previous to the war, had been owned by a company chartered by the State of Florida, but many of the stockholders lived in New York, and one or two other loyal States. At the outbreak of the rebellion the shares of these loyal owners were confiscated by the rebels. The vessel passed into exclusive rebel hands, and from thence into the alleged ownership of a British resident of New Orleans. The British claim has been rejected in the district and circuit courts, and the prize condemned finally. In this posture of affairs Mr. Scott appeals to the equity of the Government. His clients desire that their shares confiscated by the rebels be made good to them out of the proceeds now adjudged to the Government. The vessel has been sold, and the loyal shareholders simply desire to be reimbursed for the losses they have sustained by the rebel confiscation, this vessel having been the entire and only property of the corporation.

I feel it my duty to say, as I have said in court throughout the whole case, that the claim of the loyal shareholders ought, in my opinion, to be paid by the Government.

I am, your obedient servant,

GEO. A. COFFEY,
U. S. Attorney.

[C.]

OFFICE OF U. S. ATTORNEY,
EASTERN DISTRICT OF PENNSYLVANIA,
PHILADELPHIA, *May* 6, 1864.

CHARLES GILPIN, Esq.,
United States Attorney, Eastern District of Pennsylvania:

SIR: Having been requested by you to report to you briefly my views as to the facts of the case of the prize steamer "Florida," which is now pending in this district, I have to state, that I have read a letter addressed to Hon. S. P. Chase, Secretary of the Treasury, by the late George A. Coffey, Esq., dated June 1, 1863, and believe that the facts of the case of the "Florida" are correctly set forth in that letter by the late district attorney. There is one fact, however, which should be more prominently brought to your attention, perhaps, than it is in Mr. Coffey's communication to the Secretary of the Treasury, and that is the fact that after hostilities began between the United States and the people of certain southern States, the president and directors of the company which owned the "Florida," who were residents of the South, made an alleged sale of the steamer to a person resident in the enemy's country, which I believe from all the circumstances of the case was fictitious and colorable, and made for the purpose of facilitating the placing of the title to the property in the name of a neutral person with a view to protect it from seizure and forfeiture by the United States. I think that it is clear that the real ownership never passed from the corporation.

I am, very respectfully, your obedient servant,

J. HUBLEY ASHTON,
Ass't U. S. Attorney.

DISTRICT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES *vs.* THE STEAMER FLORIDA.

It is hereby stipulated and agreed, by and between the counsel for the petitioners in the foregoing application to the Secretary of the Treasury and the district attorney for this district, representing the Government, that the facts of the

case, for the purpose of said application, are as stated in the foregoing petition, and in the letters of George A. Coffey, Esq., late district attorney, and of J. Hubley Ashton, Esq., formerly assistant district attorney, subjoined thereto.

WM. H. SCOTT,
Counsel for Petitioners.
CHARLES GILPIN,
U. S. Attorney.

Dated May 18, 1864.

To all whom these presents shall come:

I, SALMON P. CHASE, Secretary of the Treasury of the United States, send greeting:

Whereas a statement of facts, bearing date the nineteenth day of May, A. D. 1864, with the petition of Benjamin Richards, Henry R. Benkard, Benjamin Richards, Jr., Robert L. Taylor, Ruth O. Delamater, William S. Whitlock, Elisha S. Whitlock, and Charles Pratt, of the State of New York, and John A. Mitchell, of the State of Rhode Island, thereto annexed, touching a certain forfeiture of five-sixteenths of the steamer Florida, incurred under the statute of the United States, entitled "An act further to provide for the collection of duties on imports, and for other purposes," approved July 13, 1861, has been transmitted to the Secretary of the Treasury by the judge of the United States court for the eastern district of Pennsylvania, pursuant to the statute of the United States, entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned," as by the said statement of facts and petition remaining in the Treasury Department of the United States may fully appear: and whereas I, the said Secretary of the Treasury, having maturely considered the said statement of facts and petition, and it appearing to my satisfaction that the said forfeiture was incurred without willful negligence or any intention of fraud on the part of the petitioners, or any one of them:

Now, therefore, know ye, that I, the said Secretary of the Treasury, in consideratien of the premises, and by virtue of the power and authority to me given by the said last-mentioned statute, do hereby decide to remit to the petitioners all the right, claim, and demand of the United States, and of all others whomsoever, to the said forfeiture of five-sixteenths of said

steamer, on payment by the petitioners of such proportion of the costs of proceedings on the libel, and of such fee to the United States attorney for said district for his actual attendance at the summary examination, as may be fixed by said court.

Given under my hand and seal of office, in the city of Washington, this twenty-third day of May, in the year of [L. S.] our Lord one thousand eight hundred and sixty-four, and the eighty-eighth year of the independence of the United States.

SALMON P. CHASE,
Secretary of the Treasury.

EFFECT AND CONSTRUCTION OF LICENSES.

Duer on Insurance, 595.

In ascertaining the true result of the English decisions on this subject, there is a serious difficulty, that I have sensibly felt in examining the cases, and shall endeavor to explain. During the war between England and France that followed the peace of Amiens, the court of common law, as well as of prize were led to adopt, from political motives, a much more enlarged and favorable construction of licenses than had been usual in former wars. In former wars a license was regarded as an act of special grace; and as such was subject, in its application, to the rules of a strict interpretation. An exact compliance with its terms and conditions was only dispensed with in cases of actual and prime necessity. (Cosmopolite, 4 Rob., 11.) But on the renewal of the war, that the peace of Amiens rather suspended than terminated, when by the overruling power and influence of France the commerce of England was nearly excluded from the ports of the continent, the granting of licenses *became a part of the settled* policy of the British Government, adopted with an express view to counteract and defeat the hostile designs of France. They were the expedient to which the Government resorted for the purpose of retaining a portion of the commerce that the enemy aimed utterly to destroy. (Good Hope, 1 ed., 329.) The courts of justice, knowing that such were the views of the government, and that they were closely identified with the interests of the government, were anxious to carry them into full effect. Hence they adopted as a new principle of construction that licenses were to be considered as granted, not from motives of *personal favor*, but *from a regard to the general interests of the country*. Consequently, where the intentions of the government, as to the nature of the trade that was meant to be protected, were substantially complied with, they regarded a departure from the liberal conditions of the license with great indulgence, and for the protection of the parties gave to the terms of the instrument the largest interpretation they could possibly admit.

To close this subject it remains only to state that, a ship, or goods, lawfully captured, and not saved from condemnation by the production of a license embracing in its terms

the entire voyage or adventure, but which is proved to have been granted after the day on which the capture had taken place. A license is in its nature prospective. It is not to be presumed that it was intended by the Government to apply to a past transaction, was to legalize a voyage already commenced; still less should it be construed as intended to defeat the vested rights of captors. Although the sovereign power of the State has an unquestionable right to release captured property, against the will, and without regard to the interests of the captor, yet the intention to exercise this right must be manifested by a proper instrument, or by express words. (Ibid, 618.)

RESUMPTION OF ALLEGIANCE.—(*Halleck, page* 500.)

"Vattel and Burlamqui both concur in the doctrine that both justice and humanity require that persons who are surprised by a war in an enemy's country should have a reasonable time to withdraw their persons and effects, and ought not to be treated as enemies, unless their departure should be unreasonably delayed."

Duer on Insurance—Section VI, 561, (*cited there.*)

"It seems a necessary deduction," says Mr. Duer, "from these views, that in the judgment of these writers the property of persons thus withdrawing themselves from the enemy's country, would, in the course of transportation, be entitled to the protection of their own government, since otherwise the very object of the lenity exercised toward them might be defeated, and that which was granted as a favor be converted into a snare." * * * *

"That he has an *election* to return is undoubted; nor is it possible to deny that the conduct of the individual, who, anxious to resume his native allegiance, honestly endeavors to restore himself and his property to the just demand of his country, is entitled to high commendation; and if so, he has surely a right to expect, not merely approbation, but the aid of his Government in the execution of this laudable purpose. * * * To confiscate the property of subjects in the act of returning to their allegiance is the extreme of injustice, as well as impolicy. It is to punish those whom their country should desire to reward. It is to deter others from following their example. It is to dissolve by violence the ties that bind the citizen to his country; to quench the feelings of patriotism, and substitute those of aversion and hatred."

AUTHORITIES ON THE POWER OF REMISSION.

In the case of the steamboat "*Grey Jacket*," Captain Meaher, owner and commander.

Has the President power to grant remission in this case?

The act of March 3, 1797, (1st Stat. at Large, p. 506,) continued in force by the act of February 11, 1800, (2d Stat. at Large, p. 7,) and amended by the act of July 14, 1832, (4th Stat. at Large, p. 597,) gives to the Secretary of the Treasury power to remit fines, penalties or forfeitures in three classes of cases.

First, where any person or persons shall have incurred any fine, penalty, forfeiture or disability, or shall have been interested in any vessel, goods, wares or merchandise which shall have been subject to any seizure, forfeiture or disability, &c. * * for laying, levying or collecting any duties or taxes.

Second, An act concerning the registering or recording of ships or vessels.

Third, An act concerning the enrolling or licensing of ships or vessels.

This does not extend to, or embrace cases under the 1st section of the act of 1818, prohibiting the slave trade.

See opinion of Attorney General Clifford, in the case of the brig Siti, 4 Opinions of Attorney General, p. 573.

Although the Secretary of the Treasury by the act of March 3, 1797, has the power to grant remission of penalties in cases provided for by that act, yet the President has power also to pardon a forfeiture in the same class of cases.

As the Constitution by the 11th article, sec. 2, clause 1, has conferred upon the President the power of granting pardons, no act of the legislature can take away or limit or abridge the power.

See 1st Kent, 284.
Rawle, 178.
Story on the Constitution, ss. 1504 and note 3 to that section; and see also 2 Story on the Constitution, p. 371, note 2.
Duer on the Constitution, p. 98.

A pardon is said by Lord Coke to be "a work of mercy whereby the king either before attainder, sentence or con-

viction, or after, forgiveth any crime, offence, punishment, execution, right, title, debt or duty temporal or ecclesiastical.

3 Inst. 233, quoted by Justice Wayne (in delivering the opinion of the court) in *exparte* William Wells, 14 Howard, p. 311.

"The acts of June 25, 1798, (Stat. at Large, p. —,) and July 9, 1798, (Stat. at Large,) for the protection of the commerce of the United States against French depredations and authorizing the capture of French armed vessels and their goods and effects, conferred, in express terms, an interest in the captors quite as indefeasible as that granted by the existing prize act of the 23d of April, 1800. The first prize act of March 2, 1799, relating to seizures by the public ships, was not less explicit; and yet by the treaty with France of the 30th day of September, 1800, (Stat. at Large, p. —,) and ratified on the 3d day of February, 1801, it was unconditionally stipulated not only that all captured *public ships* (which, by the prize act of 1799, belonged exclusively to the government,) but that *all property then taken* AND NOT DEFINITELY CONDEMNED, *or which might be captured before the exchange of ratifications*, should be restored.

"The prize act of the 23d of April, 1800, had of course been in force for some time before the ratification of the treaty.

"In exercising this undoubted prerogative of sovereignty, it was only deemed necessary to consult the interest of captors, nor did the government provide them an indemnity."

From the report of Mr. Storrs, on the bill to compensate Susan Decatur, February 7, 1827, to the House of Representatives. No. 74, 2d session of the 19th Congress, 1826–7. See vol. 1 Reports of Committees.

Mr. Storrs in said report, on page 5, further says:

"The right of captors is of the nature of that acquired, under various statutes, by the officers of the customs on the seizure of property for violation of the revenue laws, and the power which the government has vested in the Treasury Department for the remission of those forfeitures, is analagous to that which the government itself holds by the public law over prize property. This power of remission has not only been properly exercised by the Treasury Department after condemnation, but the government has directly interposed its power in other cases after seizure and prosecution, and released from forfeiture by express legislative enact-

ment, property to a vast amount, without regard to any indemnity to the seizing officers."

Again, on the same page, he says:

"The property in the prize itself is solely in the government, and it therefore assumes the disposal of its proceeds."

In the case of the United States *vs.* Morris, (10 Wheaton's Reports, 246, 6 Peters' Cond. Rep., 90,) Mr. Justice Thompson, delivering the opinion of the court, says:

"But we think a broader ground may be taken, and that the authority to remit is limited only by the payment of the money to the collector for distribution."

Mr. Justice Johnson delivered a separate opinion, and on page 106, (6 Peters' Cond.,) says:

"But in no case that I am aware of, under the collection law, can the court be called upon to pay the money in any other way than to the collector, to be by him distributed; and this distribution I consider as a mere boon from the government, which they may justly, and do practically, reserve a sovereign control over until so paid under their laws. The gift is from them of a thing belonging to them, and they may modify and withdraw that gift *ad libitum*.

"When once paid away according to legislative will, their control is at an end, and the right then, and not till then, becomes vested and absolute as between them and their officers, whom to the last the law regards as absolute donees."

And in McLane *vs.* The United States, (6 Peters Reps., 404, on page 426,) Justice Story (delivering the opinion of the court) says:

"But his (the collector's) right by the seizure, is but inchoate and although the forfeiture may have been justly incurred, yet the government has reserved to itself the right to release it either in whole or in part, until the proceeds have been actually received for distribution; and in that event and to that extent, it displaces the right of the collector. Such was the decision of this court in the case of the United States *vs.* Morris. (10 Wheat. Rep., 246.)

In the case of Edward Sangster, adm'r of Hugh West, in the Court of Claims, May 2, 1860, reported to the 1st session of the 36th Congress, Vol. 5 of Reps. of the Court of Claims, years 1859 '60, a schooner called the "Betsey and Charlotte," in 1806, was seized at Alexandria, for a violation of the act of February 28, 1806, (Stat. at Large, vol. 2, p. 351,) entitled "*An act to sus-*

pend commercial intercourse between the United States and certain parts of the Island of St. Domingo."

The district court adjudged the vessel and cargo to be legally forfeited.

The case was appealed to the circuit court, which reversed the judgment of the district court.

The United States then appealed the case to the supreme court, and that court reversed the judgment of the circuit court.

The case, "The United States *vs.* The Betsey and Charlotte," is reported in 4 Cranch., 443; 2 Peters Cond., 168, February Term, 1808.

On the 23d day of March, 1808, a statement of facts, petition, &c., was presented to the Secretary of the Treasury, under the act of March 3, 1797, (above referred to,) praying a remission of the penalties and forfeiture, and that officer on the 21st April, 1829, decided not to remit the penalty or forfeiture, or any part thereof. (See page 16 of said case.)

On the 24th day of June, 1811, President Madison remitted the forfeiture "*so far forth as the United States are interested therein*, on condition, however, that he, the said Yeaton, pay all the costs which have accrued in the case."

See pages 16 and 17.

And on the 27th day of August, 1813, upon a second application to President Madison, he states, "Now, be it known, that upon subsequent petition and further consideration of the premises, I, James Madison, President of the United States of America, have thought proper to superadd to the aforesaid act of remission this present *full and entire remission of the said forfeiture, whether accruing to the United States or otherwise;* on condition, nevertheless, that he, the said William Yeaton, shall first pay and satisfy, by the duties payable according to law, on articles similar to those forfeited, as if the same had been legally imported, and all the costs, as stated in the first mentioned act of remission."

Hugh West was, at the time of the seizure, surveyor of the port of Alexandria, and claimed that by the seizure he had a *vested* right in part of the proceeds of the sale, &c.

But the Court of Claims decided that he was not entitled to relief.

Scarborough, Judge, (delivering the opinion of the court,) said:

"The forfeiture is to the United States, and sued for in their name; and the rights of the custom-house officers do not become vested until the money arising from the forfeiture is received by the collector for distribution."

Cities Abbr. art - Rev
Seq. Art - Oct 67 -

for the United States

SUPREME COURT OF THE UNITED STATES

THE GREY JACKET AND CARGO.

Supplemental Matter.

Hon. HUGH MCCULLOCH, *Secretary of the Treasury:*

The petition of Timothy Meaher, a native of the State of Maine, and for thirty years a resident of the State of Alabama, respectfully shows that he is a loyal citizen of the United States, and has ever been such; that, as a resident of the State of Alabama, he resided in the so-called confederacy until he succeeded in escaping therefrom, in December, 1863; that during the time he remained there he was twice imprisoned by the rebel authorities on account of his loyalty to the old flag and for his Union sentiments; that early in the year 1863 he conceived the plan of escaping from the confederacy with his family and property; that for this purpose he built, of timber, cut upon his own land and sawed at his own mills, a vessel, which he intended to load with cotton, and, taking on board his wife and children, escape from the confederacy to the north, where his mother resides. That he commenced building this vessel in March, 1863, refitting her machinery from old river steamers, purchasing her rigging and the iron used in her construction himself, and finally loading her with cotton, a large portion of which was grown upon his own plantation, the rest purchased by him for the express purpose of loading her. That said vessel was completed in December, 1863, after nearly a year had been consumed in building her.

That he became such an object of suspicion to the confederate authorities that he was obliged to abandon his plan of taking his family with him, and that the authorities refused to permit him to sail, except upon the express condition that he should clear from Mobile to the port of Havana, and that he should account to the so-called confederate government through its agents for one-half of the proceeds of said cargo of cotton, which proposals, after a long delay, he acquiesced in only for the purpose of obtaining a clearance for his vessel. And he further says that he disclosed at the time his plans and intentions to those confidential friends in whom he could implicitly trust only, as the discovery of them by the authorities would have endangered his life.

That he sailed from Mobile on the 30th of December, 1863, and that on the morning of the 31st he sighted the United States gunboat Kennebec; that he did not attempt to escape, but raised the American flag, it being the only flag he had on board, and one that he had preserved during the whole time of his residence in the so-called confederacy.

That upon being boarded by the officer of the Kennebec your petitioner demanded protection for himself and property, but that the commanding officer seized both vessel and cargo as prize of war.

That said vessel and her cargo, consisting of 449 bales of cotton, (all of which was the sole property of your petitioner,) was sent first to Pensacola and then to New Orleans, Louisiana, where your petitioner was brought a prisoner; nor was he allowed to communicate with the shore in any manner until

the 18th day of March, 1864. That as soon as he could reach the proper officer, he took and subscribed the President's amnesty oath of December 8, 1863, before the clerk of the United States district court for the eastern district of Louisiana, when he ascertained that proceedings had been instituted in said court for the condemnation of said vessel and her cargo while he was detained as a prisoner; and that afterwards a decree of condemnation was entered in said court, and said vessel (the Gray Jacket) and her cargo were sold by the United States marshal of the eastern district of Louisiana; all of which your petitioner alleges was unjust, and in direct violation of the spirit and letter of the amnesty proclamation of President Lincoln of December 8, 1863.

Wherefore your petitioner avers, and will satisfy the honorable Secretary of the Treasury, that he was a loyal man attempting to escape from the confederacy with his property, in order to meet his wife and family, whom he had made arrangements should live at the home of his aged mother in the State of Maine; that he had no intention to violate the act of Congress regulating commercial intercourse with the insurgent States, of which he was a citizen, or any law of the United States, although the act which he was doing at the time of the seizure aforesaid, apart from the intention and purpose with which it was done, might be a legal and technical violation of said act, so that he may have no defence in a court of law, especially as the district court in which he was tried, ruled and held that the intentions and purpose of your petitioner could have no legal effect in the determination of the cause; and as his seizure by the Kennebec, then employed in enforcing said act of Congress, under the proclamation of the President, could in no sense be a capture to render the property maritime prize of war.

Your petitioner humbly prays the protection of the United States, and that justice may be done, and that the technical forfeiture be remitted, by order of the honorable Secretary, in accordance with the eighth section of said act; and that the proceeds of the sale of his vessel and cargo, now in the custody of said court, may be released to him, upon the payment of such legal costs and expenses as may have been incurred by the officers of the United States in the proceedings thereunder. And your petitioner will ever pray.

TIMOTHY MEAHER,
Per S. W. COZZENS, *his Att'y*,

BENJ. F. BUTLER, *of Counsel*.

To the honorable HUGH MCCULLOCH, *Secretary of the Treasury*:

The petition of Timothy Meaher, a native of the State of Maine, and for thirty years last past, a resident of the State of Alabama, respectfully shows that he is and ever has been a loyal citizen of the United States.

That being a resident of Alabama, with his family and property all there, at the breaking out of the rebellion, he was unable to leave the confederacy, except as hereafter set forth; during that time he was twice imprisoned by the rebel authorities because of his exhibition of loyalty to the flag and the Union.

That early in the year 1863, conceived the plan of escaping from the confederacy with his family and property.

For this purpose he built, of timber, cut from his own land, and sawed at his own mills, a vessel which he called the Grey Jacket; that his intention in building her was to load her with cotton, so as to be able to get away a part of his property, take his family on board and leave the confederacy forever. He commenced building this vessel in March 1863, and employed men to refit her machinery from old river steamers which belonged to him; he purchased her iron and rigging himself; that he loaded her with cotton grown upon his own plantation, or purchased by him only for this express purpose. That he completed his vessel in December 1863, after consuming nearly a year in her construction

and equipment. During the time he was thus employed he became so much an object of suspicion to the rebel authorities, that he was obliged to abandon the project of taking his family with him, and that the authorities refused to permit him to sail from the port of Mobile, except upon the express condition that he should sail for Havana, and should there account to agent of the confederate government for one half of the proceeds of his cargo of cotton. This condition was exacted of all vessels sailing out of that port for Havana, and no clearance could be procured without complying with it, which condition, after a long delay, he acquiesed in, only for the purpose of obtaining a clearance for his vessel.

Your petitioner disclosed at the time his plans and intentions to those confidential friends that he could implicitly trust only, as the discovery of them by the authorities would have endangered his life.

That he sailed from Mobile on the 30th day of December, 1863, with the full intention of delivering himself and vessel to the blockading squadron, if he should meet them, and otherwise to convey himself and vessel, if she would hold together so long, to Havanna, or some northern port, and once out of Mobile harbor, he did not put back, although his boat was partially disabled in a storm the first night out.

That on the morning of the 31st of December, the gunboat Kennebeck, came in sight; that he did not attempt to escape, but raised the American flag, it being the only one he had on board his vessel, and one that he had preserved during the whole time of his residence in the Confederate States; that upon being boarded by the officer of the Kennebeck, your petitioner demanded of him protection for himself and property, telling the officer at the time why his vessel was in this predicament, but the officer seized both vessel and cargo as prize of war.

That said vessel and her cargo, consisting of 449 bales of cotton, was first sent to Pensacola and then to New Orleans, where your petitioner was brought a prisoner, and not allowed to communicate in any manner with the shore until the 18th day of March, 1864, when he took and subscribed the President's amnesty oath of December 8, 1863, before the clerk of the United States district court for the eastern district of Louisiana; that he ascertained, upon his release, that proceedings had been instituted in said court for the condemnation of said vessel and her cargo as prize of war, *while he was detained as a prisoner* without notice to him, and that afterwards as a decree of indemnation was entered in said case, and said vessel and cargo were sold by the United States marshal of said eastern district of Louisiana to highest bidder, all of which your petitioner alleges to be unjust, and in direct violation of the spirit and letter of the amnesty oath and proclamation of December 8, 1863.

Your petitioner avers and will satisfy the honorable Secretary of the Treasury that he was a loyal man attempting to escape from the confederacy, which he had never aided with his property, [*and to take the same into the loyal States, by way of Havanna, if his vessel should prove fit for the voyage,**] in order to meet his wife and family whom he had sent out of the confederacy by another channel, and for whom he had arranged to live at the house of his mother, in the State of Maine; that he had no intention to violate the act of Congress regulating commercial intercourse with the insurgent Strtes, of which he was a citizen, or any law of the United States, although the acts which he was doing

* The words in *brackets* appear as an interlineated *amendment* in the original. They were thus introduced into the petition after it was drafted. It also appears that the amendment was made after the petition was filed and submitted to the Attorney General, inasmuch as it is stated specifically in his opinion that the petition before him contained no allegation that the cargo was "proceeding," when captured, from a revolted State to the rest of the United States.

at the time of the seizure aforesaid, apart from the intention and purpose with which they were done, might be a legal and technical violation of said act, so that he may have no defence in a court of law, especially as that district court in which his vessel was tried, ruled and held that the intention and purpose of your petitioner could have no legal effect in the determination of the cause, and his seizure by the Kennebeck, then employed in the inforcing said act of Congress under the proclamation of the President, could in no sense be a capture to render the property maritime prize of war.

Your petitioner, therefore, humbly prays the protection of the United States, and that justice may be done, and that the technical forfeiture be remitted by the order of the honorable Secretary in accordance with the eighth section of said act; and that the proceeds of the sale of his vessel and cargo, now in the custody of said court, may be released to him upon the payment of such legal costs and expenses as may have been incurred by the officers of the United States in the proceedings thereupon. And your petitioner will ever pray.

TIMOTHY MEAHER,
Per S. W. COZZENS,
His Attorney in fact.

BENJ. F. BUTLER. *of Counsel.*

OPINION OF THE ATTORNEY GENERAL.

THE GREY JACKET AND CARGO.

ATTORNEY GENERAL'S OFFICE,
March 15, 1866.

SIR: Your letter of the 29th of January propounds several questions touching the authority of the Secretary of the Treasury to remit, under the eighth section of the act of July 13, 1861, entitled "An act further to provide for the collection of duties on imports, and for other purposes," the forfeiture, which has been judicially decreed, of the property involved in the case of the steamer Grey Jacket.

That cause is at the present time pending, on an appeal taken by the claimants, in the Supreme Court of the United States, and the record presents it as a case of a ship and cargo captured by a naval vessel of the United States on the high seas as prize of war, libelled as such in the district court for the eastern district of Louisiana, and, as lawful prize, condemned by final decree of that court.

The claimant and owner of the property had been for thirty years previous to the capture an inhabitant of one of the revolted States. His allegation is, that although the vessel, with her cargo, was at the time of capture in fact bound on a voyage from the blockaded port of Mobile to Havana, the object of the voyage was to effectuate the removal of his property from the enemy's country, and to sever his relations to the confederacy.

The question whether, in any case of the capture of property *jure belli*, brought within the prize jurisdiction and condemned by a court of the United States in the exercise of that jurisdiction, the Secretary of the Treasury may entertain an application for remission under the statute of 1861, is a question of *great* interest and importance. In regard to this *vessel*, which was liable to forfeiture under the 6th section of the statute of 1861, as well as subject to condemnation for breach of the blockade of Mobile, I have only to say that even if the Secretary of the Treasury may exercise, under the statute, authority to remit the forfeiture of a vessel owned by a resident of one of the insurgent States, and found on the high seas, which has been proceeded against and con-

demned in a prize court on account of ownership, I am of opinion, as at present advised, that he cannot exercise that jurisdiction in the case of such a vessel, thus proceeded against and condemned, which was also confiscable for breach of blockade.

The Grey Jacket sailed from Mobile in violation of the blockade of that port. She was, therefore, confiscable in a prize court. The fact that she was confiscable on account of ownership did not render her any the less liable to condemnation for breach of blockade. I do not discover any tenable ground on which to repose the power of the Secretary of the Treasury, under the statute of 1861, to remit the forfeiture of a vessel which has been incurred under the *jus belli* on account of a violation of the blockade. Even if he could remit the forfeiture superinduced by ownership, he could not mitigate the legal consequences which followed from the conduct of the vessel in respect to the blockade and its laws.

These remarks also embrace the application in respect to the *cargo* of the Grey Jacket, which was equally with the vessel confiscable for violation of the blockade of Mobile. But in respect to that interest a further observation may be made, which, independently of the views just expressed, excludes any idea of the legal application of the statute of 1861 to the present cargo.

I do not perceive any ground whatever on which the jurisdiction of the Secretary of the Treasury to remit, is capable of being legally supported in the case of a cargo not "*coming*" at the time of capture from an insurrectionary State or section "*into the other parts of the United States*," or not "*proceeding to such State or section*" from the rest of the United States. In other words, I am very clearly of opinion that whatever may be the extent of jurisdiction conferred by the 8th section of the act of 1861, upon the Secretary of the Treasury, it does not extend to the case of any cargo, not impressed at the time of capture with such a destination as would render the property, if seized on land, liable to forfeiture under and by virtue of the 5th section of the act.

I have read the petition presented to you in the case of the Grey Jacket. I do not perceive that the case of the *cargo* is brought, by the admissions therein made, within the 5th section of the act of 1861. There is no allegation that the cargo was "proceeding" at the time of capture from an insurrectionary State to the rest of the United States.

As at present advised, therefore, I am of opinion that for this reason, as well as that depending on breach of blockade, in which the cargo and vessel were both involved, the jurisdiction of the Secretary of the Treasury cannot lawfully be exercised in respect to the present cargo.

The last question asked in your letter is, "whether the present is a proper case for an exercise of any authority to remit that you may possess?" If you have in law the power to remit, the question whether it would be justifiable to exert it in any particular case, is one which cannot be determined by strict legal rules or principles. The matter is wholly within your jurisdiction.

I am, sir, very respectfully, your obedient servant,

JAMES SPEED,
Attorney General

Hon. HUGH MCCULLOCH,
Secretary of the Treasury.

OPINION OF THE ATTORNEY GENERAL.

THE ADELSO AND CARGO.

ATTORNEY GENERAL'S OFFICE,
April 2, 1866.

SIR: Agreeably to your request, I have examined and considered the application and accompanying papers presented to you by Edgar Tucker and Henry Whitin, of New York, and John MacRae and Donald MacRae, of Wilmington, North Carolina, for the dismissal of the proceedings now pending against the cargo of the schooner Adelso, condemned as prize of war by the United States district court for Rhode Island, and for the restoration to them of the proceeds of the sale of that cargo.

The schooner Adelso and cargo were condemned in the Rhode Island district on November 13, 1861, as prize of war; and, on appeal to the circuit court for that district, the sentence was affirmed. The claimants thereupon appealed to the Supreme Court, but failing to appear and prosecute their appeal when the case was reached, on the call of the docket it was dismissed by the court.

The President is now asked to interpose some supposed authority conferred upon him by the Constitution or laws of the United States, and restore to the claimants the proceeds of the condemned property. Has he such power? That is the legal question I am now to answer.

It is manifest, in the first place, that the result desired by the claimants could not be attained by a discontinuance of the proceedings instituted against the property. Those proceedings have ripened, so to speak, into a judgment of the court. They have performed their function. They invoked the action of the judicial power of the government, and that power has acted. The result is a judicial decree. That decree must stand until it is reversed in due course of law by the same authority that gave it birth. The very court that rendered the judgment could not set it aside or open it. It is capable of being affected only by a decree of the appellate court.

Prior to condemnation the President might, perhaps, have directed the local law officer to discontinue the proceedings in prize. Such action on the part of the Executive might have removed the cause from judicial cognizance. But subsequent to condemnation, I know of no executive authority which could be directly exerted upon the judicial proceedings in the case, so as to impair the efficiency of the decree, or affect any one of its legal consequences.

It may be contended, however, that the President has power to remit the forfeiture to the claimants. There is no statute conferring upon the President the general authority to remit forfeitures. If he possesses it, it must be that he has it by virtue of that clause of the Constitution which empowers him "*grant reprieves and pardons for offences against the United States.*"

While it may not be susceptible of a doubt that the President has power to remit or mitigate any forfeiture of property incurred or decreed for any offence against the United States, and which is imposed by law as punishment for such an offence, I do not believe that the grant of power to the President embraces that class of cases in which the law declares property to be forfeited altogether irrespective of, and without reference to, the personal conduct of those who own and control it—cases, in other words, in which the forfeiture accrues solely as the result, and in virtue of the predicament in which the property may be found, the relations it may sustain towards the government, and the character or quality which that predicament and those relations affix to it. The confiscability of property captured and brought to adjudication, *jure belli*, stands precisely upon those grounds. The theory on which all proceedings in prize are founded and conducted is, that the property involved is "*enemy's property.*" The question of liability to confiscation in a prize court, administering and enforcing the law

of nations, is always a question whether the subject of capture is the *property of enemies.* The converse of this proposition is also true, as an eminent prize judge has explained. The inquiry "whether the subject of capture is *enemy's property* is always in a technical form, the question of confiscability in a prize court." (Op. of Cadwalader J. in the Parkhill.) Within this designation falls the property of all residents of hostile places, without discrimination in favor of those who may owe allegiance to the government of the captors, or even in favor of such of these as maintain the most friendly and loyal feeling for that government.

The prize courts, in adjudicating upon property of such ownership, institute no inquisition into the personal deportment or sentiments of the proprietors. In the case of the Venus, (8 Cranch, 280,) the Supreme Court condemned, as "enemies' property," merchandise owned by a citizen of the United States residing in England, and shipped from that country for America before any knowledge of the declaration of war. The cases in which the English prize courts condemned supplies shipped from, and actually owned in, Great Britain, for the purpose of relieving the distresses of British subjects in Grenada who were under the temporary subjection of the French during the period of our Revolutionary war, proceeded upon the ground that the supplies were constructively French, and, therefore, *enemies' property,* (1 Rob., 207.) The property was owned by people in Ireland, who were, no doubt, perfectly loyal to the British crown. If it had been owned by starving and loyal Grenadians the same decree would have been pronounced.

The cases in which property is condemned as constructively hostile on account of trading with enemies, do not proceed upon any ground of personal hostility or blame imputable to its owners. They are considered enemies in the particular transactions "by fiction, or rather by intendment of law." (5 Rob., 176.) If a citizen or subject of a belligerent State undertake to remove from the enemy's territory, property acquired long before hostilities, and it is captured at sea, it will be condemned by the operation of the rule against intercourse with enemies, and as within the designation of hostile property. (8 Cranch, 163.) The owner may have intended no wrong, and his conduct, in a moral sense, may have been entirely blameless.

The owner of a vessel violently contravening the belligerent right of search, in time of war, is *pro hac vice* an enemy, as also the proprietor of a ship that breaks a lawful blockade, (1 Rob., 340; ib., 90.) Both may be friends, and yet their property is deemed, in the particular transactions, impressed with a hostile character.

Without referring to any more examples of the application of the doctrine I have mentioned, it is clear that the judicatures by whom it is administered do not take into consideration, as an element of any legal importance, the character of the persons whose property is prosecuted as hostile, either absolute or relative, as viewed by the municipal law of the country, or the conduct of those persons, according to the code of laws administered by the ordinary tribunals of the government. A man may become a traitor by holding commercial intercourse with enemies. His conduct may at once subject him to criminal prosecution for treason or misdemeanor, and render his property confiscable as prize of war. But such intercourse, even where it stamps a hostile character on property, does not necessarily involve or imply personal guilt or criminal responsibility. In no case of that character does the prize court adjudge or consider the personal liability of the party whose property is before it for judicial action. It takes no cognizance, because it has no jurisdiction of that subject.

Prize courts are tribunals of the law of nations, and the jurisprudence they administer is a part of that law. (Wheaton, part IV, chap. 11.) They deal with cases of *capture,* as distinguishable from *seizures,* which are adjudged by

the courts constituted for the enforcement of municipal law. Their decrees are decrees of *condemnation*, whereas those of other courts in proceedings *in rem* are decrees of *forfeiture*. "Capture" and "condemnation" are words of technical significance in courts of prize, as are "seizure" and "forfeiture" in the formulary of legal expression appropriate in tribunals administering municipal law, and enforcing statutory remedies against property. The prize courts adjudicate the character and relations of the things—whether vessels or cargoes—brought within their jurisdictions. The municipal courts in dealing with cases of forfeiture, mainly judge of the acts of *persons*, and determine whether offences have been committed which superinduce the confiscation of property.

The purpose of naval warfare and maratime capture, is not to enforce penalties with a view to the infliction of punishment upon *offenders*. Their object is to destroy the wealth of hostile places, with a view to the reduction of the power of *enemies*, and the attainment of the ends for which hostilities are prosecuted. Hence, it is, that the courts constituted to adjudicate suits arising from hostile maratime captures, consider in all cases, whether, and to what, the property contributes to the wealth of hostile territory, and condemn or restore according to a code of principles framed for the determination of those questions. The property of friend, as well as foe; of the innocent, as well as the guilty, is swept to condemnation by the application of the rigorous rules of the prize law. If a man happen to own land in an enemy's country, though he be a neutral friend, domiciled in friendly territory, the produce of that land is condemned as hostile. (9 Cranch, 191.) He is considered an enemy, as proprietor of a part of the enemy's soil. He is a part of that country in the particular instance, independent of his personal residence, occupation, or conduct. So if a neutral person have a share in a mercantile house in the enemy's country, the property representing it will be capturable and condemnable as enemy's property; and upon the same principle a merchant of the hostile country, interested in a house of trade in a neutral country, cannot maintain, before a prize court, a claim for his share of captured property, owned by the neutral house. (Wheaton, 573–575.)

Without proceeding further with this line of remark, when the prize court for the Rhode Island district rendered judgement of condemnation against the cargo of the schooner Adelso, it is clear that it simply declared that the property was within the legal designation of enemies' property. The judgment affirmed nothing in respect to the personal conduct or sentiments of the claimants. Those of them who lived in North Carolina were enemies by domicil, (2 Black, 635.) Those of them who resided in Boston, if they owned an interest in the cargo, were enemies *pro hac vice*, with reference to the seizure of this particular property, which was concerned in the trade of enemies. The Supreme Court has recently decided that property of a northern man, taken in hostile trade, before the act of July 13, 1861, went into effect, was confiscable, (The Herald and cargo, December T, 1865, No. 92.) No one of the claimants was guilty of any "offence against the United States," in owning or shipping this cargo. There is, therefore, nothing in the case on which the President's pardon, granted in the terms of the Constitution, could operate.

I am clearly of opinion that the President cannot, by any exercise of the pardoning power, remit or mitigate the forfeiture and condemnation of the present cargo, or entitle the petitioners to demand restitution of the proceeds.

I find, let me say in conclusion, that this precise question was submitted by the President to my learned predecessor Mr. Bates, and that he held, as I do, that the President has no power, by pardon or otherwise, to remit the forfeiture of property regularly condemned in a prize court of the United States. (MS. Opinions, 1863, p. 374.)

Very respectfully, your obedient servant,

JAMES SPEED,
Attorney General.

The PRESIDENT.

Appendix No. 2 to the Cushing Brief

OPINION

AS TO THE CONSTRUCTION OF

THE NON-INTERCOURSE ACTS

AND

CAPTURED PROPERTY ACTS

RELATIVELY TO

THE PRIZE ACTS.

WASHINGTON:
1866.

the courts constituted for the enforcement of municipal law. Their
decrees of *condemnation*, whereas those of other courts in pro
are decrees of *forfeiture*. "Capture" and "condemnation"
nical significance in courts of prize, as are "seizure" a
formulary of legal expression appropriate in tribuna
law, and enforcing statutory remedies against
judicate the character and relations of the th
brought within their jurisdictions. The
of forfeiture, mainly judge of the act
have been committed which sup

The purpose of naval war
ties with a view to the
to destroy the wealth
of *enemies*, and
Hence, it is
maratim
trib
co
ert
co
m
do
(9
en
de
ha
se
th
tra
sh

the
of
wit
not
of
Th
wer
ert
rec
the
car
"o
is, t
tern

I
par
carg

I
the
that
of
Opi

T

OPINION

AS TO THE CONSTRUCTION OF

THE NON-INTERCOURSE ACTS

AND

CAPTURED PROPERTY ACTS

RELATIVELY TO

THE PRIZE ACTS.

WASHINGTON:
1866.

OPINION.

WASHINGTON, *April* 11, 1866.

SIR: The following observations on the construction and legal effect of the act of July 13, 1861, ch. 3, entitled "An act further to provide for the collection of duties on imports, and for other purposes," and especially sections 4, 5, 6, 7, 8, and 9 of that act, and on the act of May 20, 1862, ch. 81, supplementary to the foregoing, are respectfully submitted, not as argument on this or that side of any question, but in the sense prescribed to me by your instructions, to wit, as impartial opinion, to aid, so far as such opinion may contribute to this end, in the practical solution of the doubts arising in the administrative construction of those acts.

Permit me prefatorily to say that the Government of the United States, meaning thereby the Legislative as well as the Executive Powers, would seem, at the time of these enactments, not fully to have determined for itself how far its relation to the people and territory of the United States, wherein opposition to the laws was either flagrant or impending, should continue to be conducted within the limits of municipal sovereignty, and how far that relation was to fall into the domain of the *jus belli*.

The President's proclamation of April 18, 1861, did but call out militia, to withstand insurrectionary combinations too powerful to be suppressed by the ordinary course of judicial proceedings, in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas.

The proclamation of May 3, 1861, calls out a volunteer force for the same objects, and with the same inducements.

To be sure, the intermediate proclamations of April 19 and April 27 propose "to set on foot a blockade" of the ports within the above-mentioned States, and those of Virginia and North Carolina; but these proclamations are founded in part on the fact, that "the laws of the United States for the collection of the revenue cannot be effectually executed

therein, conformably to that portion of the Constitution, which requires duties to be uniform throughout the United States;" these proclamations profess only to provide provisionally for the interval preceding the assembly of Congress; and the clause which they contain declaring that vessels, approaching or attempting to leave either of the occluded ports, shall be warned specially, and have their papers endorsed, and captured only in case of thereafter again attempting to enter or leave such ports, and which form of special notice the law of war does not require, would seem to indicate that the President had in his mind the idea of a pacific, rather than a belligerent, blockade of the coasts of the disturbed parts of the United States.

This impression is confirmed by the consideration that, in his message to Congress, when it assembled, the President spoke of what had been done as being "proceedings *in the nature of a blockade.*"

The thought of a non-belligerent blockade might well have presented itself to the mind of the President, seeing that, in recognized authorities of the law of nations, it is laid down that neither embargo nor blockade necessarily constitutes a state of regular war; that these often precede the opening of hostilities, and have at start for object only provisional seizure, and may or may not assume the definitive character of war according to the progress of events; that modern history furnishes not a few examples of such pacific blockades, excluding of course belligerent capture and prize of war, and intending only municipal confiscation. (See Heffter, Droit International public de l'Europe, ed. 1857, p. 220, 232.)

Correspondent with this thought would have been the strenuous denial on our part, which pervades the diplomatic correspondence of the Government, of the existence, at the time, of such a state of belligerency, between the United States and the insurgents, as justified the recognition of them as belligerents by foreign Powers; and the numerous acts of Congress, asserting and regulating the continued exercise, notwithstanding the current hostilities, of municipal sovereignty of the Government throughout the United States.

The disclosures of time will probably show that less forceful and more beneficent purposes of the President in this respect were thwarted by unwise and unseasonable intimations from the ministers of foreign Powers.

The adjudication of the Supreme Court of the United States in the "Prize Cases," so called, (2 *Black*, 635,) determined that the blockade was a blockade *jure belli*, as against neutrals, and in certain cases as against citizens; but, say the Court, "it is a proposition never doubted, that the belligerent party, who claims to be sovereign, may exercise both belligerent and sovereign rights."—*Ibid, p.* 673, *referring to Rose* v. *Himely*, 4 *Cranch*, 272.

Hence, in the light of all subsequent knowledge and matured experience, as well as in that of the imperfect, and, as it were, formative conceptions of the actual time, we see that, war or no war, the enactments of July 13, 1861, and May 20, 1862, were made in the full and justifiable assertion of the permanency and completeness of the municipal sovereignty of the United States.

And thus we approach the two acts, justly assuming that, at the time of their enactment, and afterwards, first, the Government might rightfully do, as respects all property within the insurgent States, whatsoever it belongs to sovereign power to do; and, secondly, that by these acts, and those in addition of August 6, 1861, July 17, 1862, March 12, 1863, and July 2, 1864, the Government did rightfully do whatsoever in its supreme discretion as a sovereign power it saw fit to do. Whether or no the law of nations imposes any qualification in this respect, we shall have occasion to consider in the sequel.

I observe only in this latter relation, now, that a sovereign, engaged in suppressing hostilities on the part of insurgent subjects, possesses larger powers than a sovereign engaged in hostilities against another sovereign; for the latter exercises only the powers belonging to the *jus belli*, while the former superadds thereto the powers belonging to the *jus majestatis*.—*Rose* v. *Himely*, 4 *Cranch*, 241; *Hudson* v. *Guestier*, 4 *Cranch*, 293; *Cherriot* v. *Foussat*, 3 *Binney*, 252; 1 *East's P. C.*, 104; *Ryan's case*, 2 *Woodeson*, 427, *note a*; *Halleck's International Law*, *p.* 344; *Upton's Maritime War*, 212; *The Revere*, 24 *Law Rep.*, 276; *The Amy Warwick*, 24 *Law Rep.*, 344; *Smith's Trial*, 96; *The Savannah*, 368; *Ayala, De Jure et Officiis Bellicis, ch.* 2.

We are now prepared to consider what Congress purports to have enacted by these acts.

The act of July 13, 1861, is, according to its title, to provide for the collection of duties on imports, and for other purposes, and is throughout in general terms applicable to all time, and not merely to the existing disturbances in certain of the United States.

Sections 1, 2, and 3 enact that if, by reason of unlawful combinations, the revenue laws cannot be executed at any statute port of entry, the President may transfer the collection to any port of delivery in the same collection district; which provisions require no further remark here than that their municipal character is evinced by their similitude to the enactments provided for the familiar case of the old nullification controversy in South Carolina. (Compare act of March 2, 1833, ch. 57.)

In the present act, section 4 enacts that any such ports of entry may be declared closed by proclamation of the President, and if, while said ports are so closed, any ship or vessel from beyond the United States, or having on board any articles subject to duties, shall enter or attempt to enter any such port, the same, together with its tackle, apparel, furniture, and cargo, shall be forfeited to the United States. Here we have the full assertion of a purely municipal occlusion of ports, applicable to the case of a closed port, in the possession of the United States, notwithstanding the contemporaneous fact of insurrection flagrant, and of the Federal laws maintained by Federal armed force organized as for war.

Section 5 enacts the conditions of fact on which the President may proclaim the inhabitants of a State, or any part thereof, to be in a state of insurrection against the United States, and then proceeds to enact that, after such proclamation regarding such state—

"Thereupon all commercial intercourse by and between the same, and the citizens thereof, and the citizens of the rest of the United States, shall cease and be unlawful so long as such condition of hostilities shall continue; and all goods and chattels, wares and merchandise, coming from said State or section, into the other parts of the United States, and all proceeding to such State or section by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States."

Here the language is definite, explicit, and clear as to the case and subject of forfeiture, to wit, illegality of any commercial intercourse between the citizens of the insurgent States and those of the rest of the United States (without special permission of the Government,) and consequent forfeiture of all vehicles and goods in transitu by land or water

between the so-discriminated parts of the United States. It is in terms municipal forfeiture, not prize of war.

And it is presumable that, considering the scope and spirit of the whole act, such property in transitu would be forfeitable, although belonging to a person not technically a "citizen," but commercially domiciled in the insurgent States.—*See authorities collected in Laurent's Case, U. S. and G. B. Claims Commission, p.* 120.

The proclamation contemplated by the enactments of this section was duly issued by the President, August 16, 1861, and gave initiatory effect to the acts.—*U. S. Laws, vol.* 12, *p.* 1262.

Section 6 enacts that "from and after fifteen days after the issuing of such proclamation, as provided in the last foregoing section of this act, any ship or vessel belonging in whole or in part to any citizen or inhabitant of said State or part of a State, whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited to the United States."

Here question arises: Do or not the words of the sixth section involve inquiry of the destination of the vessel? Does the cargo, as well as the vessel, become forfeited? Are the conditions of the case to be the same as those of the preceding section?

Looking at the letter of this section, it would seem that, by it, Congress intended to comprehend not only any ship or vessel of such ownership, in ports of the United States, regardless of any proposed voyage, or at sea, whithersoever bound. But, as to the latter case, of ships at sea, it might be the safer construction to comprehend them only when in form or in true purpose destined to some port of the United States.

However this may be, yet the cargo of such ship or vessel, or any part thereof, having the same ownership, would, although not expressed, likewise be comprehended by construction. For it is difficult to see why, as rebel property, the vessel should be forfeited for undertaking an unlawful voyage, and not her contents, for the same unlawful voyage. General rules of law would make both subject to the same fate, where the inducements are the same, and under the same circumstances.

Nothing occurs to the contrary of this, except a decision of the Supreme Court on the Embargo Acts, (act of April 25, 1808, ch. 66, s. 11, 2 U. S. Laws, 501,) to the effect that the detention of a vessel authorized by that

act does not require the detention of the cargo, if it be separable from the vessel, and it be the will of the owner to make the separation, (*Slocum v. Mayberry*, 8 *Cranch*, 1;) because, the object of the law being to prevent the prohibited voyage, this object did not require detention of the goods. The voyage was broken up effectually by the detention of the vessel: hence the cargo might well be surrendered to the custody of the owner. For, say the Court, "The cargoes thus arrested and detained were generally of a perishable nature, and it would have been wanton oppression to expose them to loss by unlimited detention, in a case where the owner was willing to remove all danger of exportation," (p. 11.) No such considerations apply to the case of rebel property confiscable as such. And the cargo, equally with the ship, is forfeited by the Non-intercourse Acts of the early history of the Government.

Certain it is, meanwhile, that, as to cases of municipal forfeiture, it lies in the discretion of Congress to pronounce forfeiture, either of the vessel alone, or of the cargo alone, or of both together; and therefore the question is one *stricti juris*, on the construction of statutes. But there is at least plausible cause to think that the intention here was to forfeit cargo as well as vessel.

And hence, at any rate, although the true meaning of this section be not so perfectly limpid as that of the fifth section, still it is prudent and safe to say, that the construction here suggested is one, which, in the ordinary course of justice, counsel would regard as of sufficient gravity and apparent force to warrant suspension of opinion and action until it could be submitted to the determination of the proper courts of law.

That a municipal seizure of property, belonging to a citizen or subject, (and in certain cases even foreign property,) may be made on the high seas, is indubitable.—*La Jeune Eugenie*, 2 *Mason*, 409, 413.

Section 7 enacts that "in the execution of this act, and of the other laws of the United States providing for the collection of duties on imports and tonnage, it may and shall be lawful for the President, in addition to the revenue cutters in service, to employ in aid thereof such other suitable vessels as may, in his judgment, be required."

Section 8 enacts that "the forfeitures and penalties incurred by virtue of this act may be mitigated or remitted in pursuance of the authority vested in the Secretary of the Treasury by the act entitled 'An act pro-

viding for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned, approved March 3, 1797,' or, in cases where special circumstances seem to require it, according to regulations to be prescribed by the Secretary of the Treasury."

This enactment, it is manifest, confers on the Secretary not merely the power he had in similar matters by previous laws, (Comp. Acts of March 3, 1797, and of February 11, 1800,) but also large additional powers. According to the former acts, he could remit only on the report of the district judge, before whom the case might be pending, and on the facts reported by such judge, (*The Margaretta*, 2 *Gallison*, 515.) According to the present act, he may, when special circumstances seem to him to require it, proceed without judicial report, and in pursuance of regulations of the Treasury Department.

In either case, conformably with established rules of law, the Secretary's power to remit applies at any time before or after final condemnation until the proceeds shall have been actually distributed, and such remission extends to shares of the proceeds accruing to individuals, as well as to the interest of the United States.—*United States* v. *Morris*, 10 *Wheaton*, 246; *McLane* v. *United States*, 6 *Peters*, 404.

Section 9 enacts that proceedings on seizures for forfeitures under the act may be prosecuted in the Courts of the United States in any district into which the property so seized may be taken, (or in which it may be seized.)

So much as to the tenor of the act of July 13, 1861.

The proclamation of the President construes and executes all the provisions of the act, in the following words, namely:

"I hereby enjoin all marshals and officers of the revenue and of the military and naval forces of the United States, to be vigilant in the enforcement of the said act, and in the enforcement of the penalties and forfeitures imposed or declared by it, leaving any party who may think himself aggrieved thereby to his application to the Secretary of the Treasury for the remission of any penalty or forfeiture, which the said Secretary is authorized by law to grant, if, in his judgment, the special circumstances of any case shall require such remission."—*U. S. Statutes, vol.* 12, *p.* 1262.

Here we see that the officers of the Navy, and of the Army, as well as of the Treasury, are to aid in making the seizures contemplated by the act, although such seizures are purely municipal, and that all persons

aggrieved thereby are to present their grievances to the Secretary of the Treasury.

Next in order of relation comes the supplementary act of May 20, 1862, which empowers the Secretary of the Treasury to grant or to refuse clearance to any vessel or other vehicle laden with goods, wares, or merchandise, destined to a foreign or domestic port, whenever he shall have satisfactory reason to believe that such goods, wares, or merchandise, or any part thereof, whatever may be their ostensible destination, are intended for ports or places in possession or under control of insurgents against the United States; and any vessel or vehicle so departing, or attempting to depart, without such clearance, is, with her tackle, apparel, furniture, and cargo, forfeited to the United States.

The same act empowers the Secretary of the Treasury to prohibit and prevent the transportation, in any vessel, or upon any railroad, turnpike, or other means of transportation in the United States, of any goods, wares, and merchandise, of whatever character, and whatever may be the ostensible destination of the same, in all cases where there shall be satisfactory reason to believe that such goods, wares, or merchandise are intended for any place in the possession or under the control of insurgents against the United States; and any goods, wares, or merchandise transported, or attempted to be transported, in violation of this provision shall be forfeited to the United States.

Section 4 enacts that proceedings for the penalties and forfeitures accruing under this act, and for the mitigation and remission of the same, shall conform to the provisions of the act of July 13, 1861, to which this act is supplementary.

Finally, section 5 enacts that "the proceeds of all penalties and forfeitures, incurred under this act, *or the act to which this is supplementary*, shall be distributed in the manner provided by the 91st section of the act of March 2, 1799, entitled 'An act to regulate the collection of duties on imports and tonnage.' "

This act is important, not merely because it adds to the scope of forfeitures, but for the greater reason that it makes express grant of a share of the forfeitures, accruing as well under the act itself as under that of July 13, 1861, as for revenue seizure, thus supplying a deficiency in that act, and rendering still more positive and clear the purpose of Congress

to enact a forfeiture, not as condemnation *jure belli*, but by municipal right, for the use of the Treasury and the seizing officers of the Treasury.

Now, pausing at this stage of the investigation, and reverting to the single inquiry,—what is the true meaning of the two cognate acts of July 13, 1861, and May 20, 1862?—it would seem rightful to assume, as a thing beyond peradventure or doubt, that these acts, in express terms, intention, and spirit, do enact mere municipal forfeitures, subject to the administration of the Secretary of the Treasury.

In justification of the assumption of the Government to retain and exercise complete municipal sovereignty over insurgents against the United States, general authorities were cited at the commencement of this Opinion. Confirmation of the doctrine, as applied specially to the two acts of Congress before us, occurs in a judicial opinion entitled to deference, that of Judge Treat, of the District of Missouri, in the case of the United States *v.* Barrels of Cement, (3 *American Law Register, N. S.*, 735, 747.) His words are as follows:

"Considering the statute (of July 13, 1861) as the exercise of municipal or intra-territorial sovereignty, prohibiting certain commercial operations, the claimants, no matter where residing within the territorial jurisdiction of the United States, were bound thereby, irrespective of State citizenship or residence. All citizens, loyal or disloyal, are alike subject to the law. Hence a decision of the question as to such citizenship or residence on the one hand, or as to the loyalty or disloyalty of claimants on the other, is not necessary in this case. The analogies drawn from the laws of war, as laid down by publicists, may assist in solving the constitutional questions which arise concerning the power of the Federal Government in suppressing insurrections, and may also aid in the interpretation of the statutes passed concerning such a condition of hostilities; but the case before the Court is not one to be decided by international law, but by municipal statutes. The voyage was not between this and a foreign country during a foreign war, does not affect any supposed neutral right, and necessarily involves, therefore, no doctrine of international law, regulating warlike operations between foreign belligerents. The questions are intra-territorial entirely, and relate solely to the powers and duties of the Federal Government, intra-territorially, under the Constitution. * * * * The position of foreign nations with respect to this insurrection, it must be remembered, does not determine its status in American courts. The latter follow exclusively the decision of the political department of the United States Government on that question. Even if other nations had recognized the so-called Confederate Government as an independent Power, their recognition would bind themselves and their subjects alone, not the United States, Those foreign nations which have recognized a state of belligerency, and assumed the position of neutrals, estop their subjects from disputing the lawfulness of captures on the high seas, according to the laws of mari-

time warfare. The ships and cargoes of their subjects are to be judged accordingly. But rebel property thus captured is amenable to municipal authority. All American courts are bound to treat the insurrectionary States as integral parts of the Union, and subject to its Constitution and laws. In the adjudication of all such questions arising here, the United States statutes would furnish the rules of decision. In other words, as to all foreign nations, the United States Government is absolutely sovereign within its own territorial limits, and over its own subjects. Its internal constitution is a subject with which foreign Powers have no right to intermeddle. The equality and independence of nations could not otherwise exist."

The same learned Judge, in another case, that of the United States against Certain Packages, (2 *American Law Register, N. S.*, 419,) makes the following observations:

"The act of July 13, 1861, is a municipal and revenue statute.

"Waiving all discussions of the constitutional question, (which is purely municipal or intra-territorial,) and looking only to the international laws of blockade, neutrals cannot sail on a voyage with the intent to enter a blockaded port without becoming lawful prize under the law of nations. A citizen of the United States subject to the municipal law may be forbidden by that law to do what a neutral would have a right to do on the high seas. A neutral, for instance, may lawfully enter any unblockaded port of the adverse belligerent with a cargo not contraband, and depart therefrom. But if an American citizen (the United States being the other belligerent) should attempt to do so, the United States might subject him to severe penalties personally, and confiscate his vessel and cargo, if thus found 'adherent to the enemy,' as was done by the act of July 6, 1812. He is subject both to the law of nations and to the municipal law of his own domicil."

Further reference, in support of the same opinion, may be made to the cases of the United States *v.* The Steamboat Hannibal, and of the United States *v.* The Champion, (2 *American Law Register, N. S.*, 421.)

If there were nothing else to affect the question, we might well stop here, and conclude that, in virtue of the provisions of the act of July 13, 1861, and of May 20, 1862, the jurisdiction of the Secretary of the Treasury is complete, in regard to all the cases comprehended within the purview of those acts.

Nor could any question be raised in this respect, but for the fact, that, on seizures made in cases where the subject-matter and the circumstances were such as those acts define, proceedings have been instituted and condemnations had on the prize side of the admiralty courts as for captures *jure belli*, instead of on the instance side as for seizures by municipal authority; and that, in consequence of this, the proceeds are now claimed

for distribution as prize money, half to the captors, and half to the pension fund of the Navy.

Hence the ultimate question may be one of conflict of law between revenue acts and prize acts.

At the time when most of the takings and of the proceedings for condemnation occurred, the question of prize stood on old acts, namely, that of April 23, 1800, and its supplements, especially those of January 22, 1813, April 26, 1816, and March 3, 1849, together with certain amendatory provisions in the more recent acts of March 25, 1862, July 17, 1862, and March 3, 1863, in so far as regards the provisional custody of prize money and its ultimate distribution. All these acts are now superseded by the later act of June 30, 1864, which constitutes the existing statute prize law of the United States.

Although the late acts, including that now in force, are all subsequent in date to the revenue act of July 13, 1861, and most of them to that of May 20, 1862, yet, in view of the tenor of the pre-existing acts, that fact is not decisive as to any matter of present consideration.

Still the circumstance has some weight. These forfeitures were expressly granted to the Treasury and its officers by the Revenue Acts of July 13, 1861, and May 20, 1862; and what good reason is there to pretend that the grants were revoked by mere implication of subsequent Prize Acts, and this, in many cases, even after the forfeitures had actually in right or fact accrued to the Treasury?

According to the Prize Acts, the proceeds of all captured property, adjudged good prize, shall, when the vessels captured are of equal or superior force to the vessels making the capture, be the sole property of the captors, and when of inferior force shall be divided equally between the United States and the officers and men making the capture, in certain defined proportions; and all prize money arising from captures made by the vessels of the Navy of the United States is, in the interval of time between the sale of the prizes and the final distribution of the question of prize in due form of law, deposited with proper officers of the Treasury.—*The Porpoise*, 2 *Curtis, C. C. R.*, 307.

Now the critical question is,—Do the Prize Acts *supersede* the acts of municipal forfeiture? Is every provision of revenue law to be deemed and taken as absorbed and extinguished by prize law?

The assumption that it is so is based upon the opinion of the Supreme Court in the case of "The Sally," (8 *Cranch*, 382,) which is to the effect: 1. That, in pursuance of adjudications of the prize courts of Great Britain, property engaged in illegal intercourse with the enemy is deemed enemy property, and so must be condemned as prize to the captors, notwithstanding any antecedent municipal forfeiture; 2. That the municipal forfeiture was absorbed in the more general operation of the laws of war; 3. That "the property of an enemy seems hardly to be within the purview of mere municipal regulations, but is confiscable under the *jus gentium;*" and, 4. That if the doctrine were otherwise, still the Prize Act "operates as a lawful grant of all property rightfully captured by commissioned privateers as prize of war."

As to the first of these four propositions, to wit, that the property engaged in illegal intercourse with the enemy is to be deemed enemy property, it is immaterial whether we deny that absolutely, or consider it as true, under certain conditions; for it is but the assertion of a mere legal fiction, advanced for the purpose of subjecting different things to the same legal consequences by fictitious and artificial assimilation.

As to the second proposition, to wit, that municipal forfeitures are absorbed by the general operation of the laws of war, that again is not only a legal fiction, but a metaphorical form of words to disguise a thought, which, if expressed in simple language, would not be admitted by any save interested parties. It amounts to this:—No matter what disposition you, the Government, may, in the exercise of your sovereign power, expressly make of property subject to municipal forfeiture,—whatever that may be, we, the prize courts, undertake to defeat your sovereign and positive laws on this subject, by setting up against them the legal fiction of an all-devouring general operation of the laws of war, which means our own construction of rules of maritime prize wrought out by us in the interest of prize captors! How can the prize courts rightfully assert any such power, in a purely domestic question, to overrule the statute law of their own Government?

The third proposition, doubtingly enunciated by the Court, and in the form of a *semble*, not of a positive assertion of truth, is the groundwork of the decision. "*Semble*" [in effect say the Court] that the property of an enemy, being confiscable by the *jus gentium*, is hardly within the pur-

view of a mere municipal regulation. Perhaps "yes,' and perhaps "no," as to the property of enemies in fact. But, in the matter before us, it is not the property of enemies in fact, but of Americans. And it is very debateable whether the decision has any application to cases like this; because it must be admitted that insurgents are only enemies in a qualified sense, and by fiction, construction, artificial assimilation treated as identity; since they do always continue subject *de jure* to the municipal sovereignty of the legitimate Government.

Finally, as to the fourth proposition of the Court,—that is altogether fallacious.

In virtue of what established rule of construction does the Court assert that a grant of prize forfeitures to prize captors annuls a grant of revenue forfeitures previously vested in the Treasury? That is not apparent as general doctrine. Least of all is it apparent, if such were a general doctrine, how it would apply to the present matter, as to which not only does the statute vest the forfeiture in the Treasury, but the express executive command of the President, as constitutional "Commander-in-Chief of the Army and Navy of the United States," plainly and peremptorily orders all officers, military, naval, and civil, to deal with the property, described in these acts, not as prize, but as Treasury forfeitures, subject to remission by the Secretary.

Why may not "the property of an enemy" be within the purview of mere municipal regulations, when the party is but a constructive or fictitious enemy, and is in fact and in truth a subject, and so amenable to the municipal law? It seems, on the contrary, evidently just that the property of an enemy *subject* should, in certain conditions, be within the purview of mere municipal regulations. It is the peculiarity of the legal predicament of a rebel, as we have already seen, to be responsible both to the municipal law and the *jus gentium*.

Neither in the opinion of the Court in the case of "The Sally," nor in the argument of counsel in the twin case of "The Rapid," (8 *Cranch*, 154,) is the present contingency touched; although in "The Rapid" the Court does argumentatively consider and decide that property of a citizen of the United States may be prize of war to the United States.

In "The Sally," the Court loosely and upon hasty presentation of some-

thing which in its opinion "hardly seems to be," comes to a conclusion, certainly erroneous in its generality of statement, and which as argument stands upon the equally cursory statement of opinion attributed to the prize courts of Great Britain.

While, in the early part of the present century, the political department of the American Government was engaged in steadily combatting the over-strained constructions of the laws of maritime war, set up by the courts and publicists of England, it is remarkable that not a few of the most exceptionable of those constructions were at the same time being transported one by one into our own jurisprudence by the judicial department of our Government, with a prevailing tendency to exaggerate the rights of prize, in the interest of captors, that is, of maritime depredation. One of the marked manifestations of that tendency is the *privateer* decision in the case of "The Sally."

It may be too late now to undo that which is already done in this respect; but the occasion is a good one to stop going on in that direction, and to begin to act on a wiser and better policy of our own, and ceasing, in a purely domestic question, to submit the rights of our own sovereignty to the imaginary pression of hostile or foreign prize law.

The opinion of the Court, in the case of "The Sally," exhibits no intrinsic claims to respect. It is the curtest possible, and furnishes very scanty and imperfect reasons for the decision.

The Court half apologizes for this unsatisfactory brevity, by referring to the previous case of "The Rapid." But in that case no opinion whatever is given on these points.

"The Rapid" and "The Sally" were both war-captures, made during the late war between Great Britain and the United States. But for the occurrence of a foreign war, those vessels would have been confiscable under the Non-intercourse Acts, and they ceased to be so because of that war: which consideration may serve to sustain these two decisions, but fails to reach the present question.

The English prize case of "The Nelly," (1 C. Rob., 219, note,) on on which our Supreme Court relied in the case of "The Sally," is quite as unsatisfactory as the latter; and although it is pertinent to the latter case, because in "The Nelly," as well as "The Sally," the property was

affected by foreign war, yet, morever, a decision the other way, that of "The Etrusco," was very summarily cast aside by Sir William Scott.

If foreign prize law is to decide the question, it is not easy to see why that of England should be accepted as conclusive, rather than the contrary law of France and Spain, as cited in the case of "The Nelly."

The nearest analogous case to the present is that of "The Dickinson," (*Decisions of Hay and Marriott, p.* 1,) which was an incident of the American Revolution. There the forfeiture did not go to the captors, but to the Lord High Admiral.

In Great Britain, the Crown has power to limit the operation of hostilities, and to exempt from prize, generally or specially (*The Elsebe*, 5 *C. Rob.* 173;) it may restore prize as against the interest of captors, (*The St. Ivan, Edwards*, 377;) it may at any time before distribution alter or revoke a grant of prize money, (*Alexander* v. *Duke of Wellington*, 2 *Russ. & M.* 35;) and emergencies of public policy in particular cases suffice to divert condemnation from the captors, and award it to the Crown, (*Ships taken at Genoa*, 4 *C. Rob.* 388.)

These considerations serve, at least, to show how unsafe it is to transfer to our admiralty jurisprudence some detached dictum of the English prize cases, as that in "The Nelly," without regard to the temperaments and qualifications attaching to English prize law by reason of its complex relations to the Crown, to the Lord High Admiral, and to the Exchequer.

It is much to be regretted, said a statesman of the last generation, speaking of the decisions of the time and temper of that of "The Sally,"—it is much to be regretted that "so great a passion for prizes" * * * fascinated and seduced our courts, and contaminated our code with a "craving for condemnations."

In fine, the decision itself in the case of "The Sally" is a debateable one; and, if sound, still it does not, either in fact or in terms, cover the cases before us, and is not entitled to be regarded as dictating what decision shall be made of them. It is wide of the question before us.

That question is a new one, and it is this:

May not the United States, in the exercise of their sovereignty as such, determine what shall be done with property taken by the United States from Americans, legitimate subjects of the United States? By what rule of right

or reason is it, that, in regard to the property of such *Americans*, prize law should assume to override municipal law? It is in the mere discretion of the Government whether it will or not allow *any* prize money to maritime captors, even in time of foreign war; just as it is in the discretion of the sovereign to allow or not to allow booty to land captors in time of foreign war. All that, in the United States, stands absolutely upon statute law, enacted in virtue of the power given by the Constitution to Congress to "make rules concerning captures on land and water."

In the present case, the statute does undoubtedly, in express terms, enact that certain property shall be forfeited and distributed as revenue forfeiture. Surely Congress has the power so to enact. That is not a question of international law, *jus inter gentes*, but of domestic policy and domestic law, with which the international law has no concern. And it is begging the whole question to pretend that the law of prize, enacted by Congress, abrogates, extinguishes, and annuls the law of revenue forfeiture enacted by the same Congress.

There is one important adjudication, that of Judge Betts, of the southern district of New York, the case of "The Sarah Starr," in which, while commenting on the provisions of the act of July 13, 1861, and deciding that the case before him was one of prize, yet he concludes that "there is no incompatibility in inforcing the forfeiture, through the power of the Court under the process of prize, or in proceedings for condemnation on the instance side of the Court, on motion of the district attorney in the same suit."—*MS. Opinion in the case of the brig Sarah Starr and cargo, and the schooner Aigburth and cargo.*

In his discussion of these cases, Judge Betts appears to assume that the sixth section of the act of July 13, 1861, comprehends *cargo* as well as *vessel*.

In the case of "The Amazon," and in other cases from the eastern district of Pennsylvania, heretofore acted on by the Treasury Department, it has been distinctly maintained by Judge Cadwalader, that seizures, coming within the letter of the act of July 13, 1861, even although proceeded against as prize, are nevertheless treatable as revenue forfeitures, within the jurisdiction of the Secretary of the Treasury.

Admitting, as ruled by Judge Betts, that a case may come within the purview both of the Prize Acts and the Revenue Acts, and so be proceeded

against by double process at the same time, on the instance and the prize side of the admiralty court, then it would follow that the district attorney might sue on the instance side alone, and, at the outset, with as much propriety as to sue on the prize side alone.

In other words, a true determination of the present question cannot be precluded by the mere fact of the district attorney having, in his discretion, and it may be erroneously, elected to sue on the prize side of the Court, instead of the instance side.

It is no more competent here to say, that the captors in prize have a vested right to a distributive share of the proceeds in the cases under consideration, by reason of statute promise, than it is to say that the revenue officers have a vested right by similar statute promise; for the statute engagement of distribution to the revenue officers in the fifth section of the act of May 20, 1860, is just as positive and explicit, as the statute engagement to naval captors in the act of April 23, 1800, or that of July 17, 1862.

Which of these acts, if either, is paramount and exclusive,—which, if either, is to take and dispose of the property in dispute,—is a question of statute construction, and of public law, which, regarding as well the amount of money at stake as the momentous character of the legal principles involved, seems to be pre-eminently fit to receive its final determination at the hands of the Supreme Court of the United States.

It is understood that the question arises formally, and awaits decision, in the case of "The Gray Jacket," now pending in the Supreme Court.

In the Circuit Courts of the United States, and, indeed, in the courts of the States, when a class of cases, more or less numerous, happens to be pending, and one of them shall have been taken up to the highest Court for final decision, it is the ordinary practice, and the received exercise of judicial discretion, to continue and suspend all the cases of the same class, until the test case shall have been finally determined.

It seems to me that the practice of the courts in this respect furnishes a rule of action here, which may well be followed by the Treasury Department.

Applicable to the main question there is another class of considerations, which, although not involving so much debate of technical law as the issue of conflict between revenue forfeiture and prize forfeiture, yet is

more important, perhaps, in its influences on the determination of the true effect of these acts.

The acts affect in terms only the property of Americans, whether such by nationality or by domicil: Americans personally loyal, it may be, as well as Americans disloyal, and Americans inhabiting the loyal States, as well as Americans inhabiting the insurgent States. In order to stop the commercial intercourse between the two divisions of the Union and their respective inhabitants, it was necessary to enact general laws comprehensive in their purview. But, in the execution of such laws, cases are prone to occur where technical violation of the statute may be attended by mitigating circumstances, or may be altogether innocent in spirit or intention, nay, may be absolutely meritorious and praiseworthy. It would be in accordance to all the traditions of the Government, and in congeniality with received usages of legislation, to provide for the punishment of such illegal intercourse by forms of law admitting remission or mitigation of penalties and forfeitures. To do this, would not imply special or undue regard for inhabitants of the insurgent States: it would be dictated still more by tenderness towards inhabitants of the loyal States, equally subject to the penal operation of the acts. Such is manifestly the inducement of these acts. In order that they might not operate oppressively, and in order to enable the Government to afford relief in particular cases deserving it, Congress enacted, not a law of prize, but a law of revenue forfeitures, subject to the jurisdiction of the Secretary of the Treasury.

Confirmation of this view of the subject is found in that provision of these acts, which empowers the Secretary of the Treasury to grant licenses or clearances for the intercourse otherwise prohibited, and to make general regulations in this behalf. Thereupon it would follow consistently, as the acts in fact provide, that the Secretary should have power to mitigate or remit the consequences of things done, or omitted to be done, either in violation of or according to the regulations of the Department.

Revenue forfeiture would accomplish all possible objects of public policy contemplated by the acts. Prize forfeiture could be no more effective towards the attainment of the end sought than revenue forfeiture. Prize money to captors, and nothing else, makes difference between the

two forms of forfeiture. And whether to grant prize money to captors or not, and if granting it, then in what cases, is, we repeat, a question of public policy not depending on any supposed laws of war, but on the sole discretion of the Government.

Congress might have subjected all these cases to the law of war-prize, if it had seen fit so to do; but it did not; it chose to subject them to the municipal law, apparently for the express purpose of bringing them within the scope of remission or mitigation, according to the accustomed forms of statute.

If, by construction of the supposed *absorbing* qualities of the laws of war, these revenue forfeitures are perverted into prize forfeitures, then all the wise and beneficent purposes of Congress in this respect are frustrated. For there is no convenient statute routine, if indeed there be any statute means, whereby either a loyal inhabitant of the insurgent States or a feal inhabitant of the loyal States, can obtain relief in the case of the unjust forfeiture of his property as prize of war. To be sure, the President may, perhaps, have jurisdiction over the question of prize, just as the Crown has in Great Britain; for the statute or other grant of prize to captors in Great Britain is just as effectual in terms of donation as it is in the United States. But, we repeat, no convenient statute means for prize remission exist as with revenue forfeitures.

Whether the construction of prize law shall be allowed to frustrate the declared will of Congress in the present matter is a consideration, independently of all the other considerations suggested, which would seem to justify suspension of distribution of prize, that is, of administrative action adverse to the express terms of these acts, until the question of law involved shall have been adjudicated by the Supreme Court.

These considerations appeal with peculiar force to the Secretary of the Treasury. Disobedience to his regulations constitutes the offence which these acts punish. The acts, in terms, require him to take complete jurisdiction of the subject; to receive the forfeitures into the Treasury; to remit or to mitigate in his discretion; and to distribute a share of forfeitures among officers of the Treasury. Shall he repudiate and renounce this jurisdiction, which includes, not only his own official duties, but also the right of the Treasury, which he administers? And if so, why shall he do this? Is he compelled thus to pretermit the performance of a

statute duty, merely because some district attorney has, for good or bad cause, or none at all, instituted proceedings on the prize side of the district court, instead of the instance side, as required by the letter of statute and the express command of the President. Surely such a step, on the part of a subordinate officer, does not determine the power or regulate the duties of the Secretary of the Treasury.

Nothing less than a declaratory act of Congress, or a decision of the Supreme Court, can suffice to unloose the hand of the Department in this behalf, and take from it either power or money committed to it by unequivocal provisions of acts of Congress.

There is one other act, intermediate between those of July 13, 1861, and May 20, 1862, which demands attention. It is the strange one of August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes."

Section 1 sets forth the conditions of such illegal uses, involving the consequence of liability of the property to confiscation, and then enacts that "all such property is hereby declared to be lawful subject of *prize and capture;* and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

Section 2 enacts that "such prizes and captures shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same may be seized, or into which they may be taken and proceedings first instituted."

Section 3 enacts that "the Attorney General or *any district attorney of the United States in which said property may at the time be,* may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States, in equal parts."

Section 4 provides for the emancipation of slaves employed by their masters in any service against the Government, and is irrelevant to any present question.

This anomalous act, with its inaccurate language, confusion of liabilities, remedies, and jurisdictions, its omissions as singular as its commissions, offers a very striking illustration of the embarrassments which sometimes occur in the exposition of acts of Congress.

In the absence of any authoritative judicial commentaries on this act, we may possibly determine its legal effect by liberal resort to conjectural supplement of its deficiencies, and discretionary redistribution of its unassorted elements.

When the act speaks of "prize *and* capture," without discrimination of place, as whether by sea or land, we are not to suppose it intends to create a new law of *land*-prize, that is, military booty or loot. There is not in this act or any other, provision for applying the rules of prize process and distribution to land captures by land forces. Nay, according to a recent opinion of the Supreme Court, capture on the land cannot be regarded as *prize*, in any sense. (*Mrs. Alexanders Cotton*, 2 *Wallace*, 404.) All such captures, except as they may be included within the purview of the acts of July 13 1861, and of May 20, 1862, or of other provisions of this act of August 6, 1861, belong to the category of the Confiscation Act (July 17, 1862) or that of the Captured Property Acts (March 12, 1863, and July 2, 1864.)

And the general tenor of the Captured Property Acts seems to require that all insurgent property captured within the United States shall be turned over to the Treasury Department. That is especially required of all officers and privates of the army, and of all officers, sailors, and marines of the navy, as to any property upon the inland waters of the United States.—*See U. S. Statutes, vol.* 12, *p.* 821.

To return to the act of August 6, 1861: There may be cases of maritime capture, and so of possible prize, comprehended within the conditions of forfeiture prescribed by this act.

The unskilful framers of the act seem to have supposed so; for the second section gives cognizance of cases to "admiralty" in language of contradistinction from the district court, as if these were distinct and separate courts. And yet, on the other hand, this fact is inconclusive, because jurisdiction in admiralty does not necessarily imply *prize*, since revenue seizures are equally cognizable in admiralty.

Moreover, the third section expressly enacts, that condemnation under this act shall be either for the benefit of the United States, or on *qui tam* information, half to the informer, and half to the United States. With reference to which, the second section gives jurisdiction to the circuit and district courts as in civil matters, according to the amount in controversy.

This provision is of universal terms, and seems to exclude all questions of prize (in the sense of prize law) from the purview of the act.

Note, however, that this act contains no express grant of power to the Secretary of the Treasury to mitigate or remit forfeiture, nor any clause for the distribution of forfeiture or any part of it among officers of the Treasury.

In fine, the act stands by itself, with apparently little, if any, practical importance, except as it may have served to support here and there a *qui tam* information for the forfeiture of some stray piece of insurgent property, seized in places where the functions of the courts of the United States were going on without interruption. If any property captured on the high seas were so conditioned as to come within its purview, the captor, nevertheless, probably caused it to be libelled as prize of war, and so the relation of it to this act may have passed without notice; and if any such property were captured on land, or upon the inland waters of the United States, it is embraced within the provisions of other acts, either the two Non-intercourse Acts or the Confiscation or the Captured Property Acts.

I say the Captured Property *Acts*, because, whatever question might exist as to the validity of the first of the acts, by reason of its having been approved after the expiration of the Congress, (March 12, 1863;) as to which there certainly may be question, (*Cushing, Lex Parliamentaria, p.* 920, *s.* 2378;) still that act is saved by the force of the subsequent act (July 21, 1864) on the same subject.

Hence, upon examination of all the cases pending, it may not appear that any exist, which present the same conflict of law and right, between the act of August 6, 1861, and the Prize Acts, as that between these and and the Non-intercourse Acts. If any such cases of conflict do exist, then the reasons for suspension of distribution are similar to those which apply to the cases of conflict under the Non-intercourse Acts.

All the conflict attaches to the condition of *American* property, and such only, that is, American by citizenship, or American by commercial domicil, whether in the loyal or the insurgent States. It does not apply to *foreign* property captured *jure belli*, as belonging to persons not subject to the municipal jurisdiction of the United States.

To resume: If you determine to act on the hypothesis of discriminative

suspension in order to await decision of the Supreme Court, then the first thing to do will be to classify the pending cases, according to the several categories into which they respectively fall.

The cases, on which distribution might be suspended, are all such as are comprehended within the letter of the acts of July 13, 1861, and May 20, 1862, and of that of August 6, 1861, as they are severally explained in the foregoing observations. It would comprehend only Americans by nationality or domicil, and their property, whether a vehicle and its contents, or other property in transitu, by land or water, contrary to the non-intercourse provisions of these acts, or a ship (and her cargo) found in a port of the United States, or at sea under certain circumstances, or the specific property employed in aid of the rebellion.

Such suspension would not cover prize money due on foreign property captured for breach of blockade or other cause appertaining to the *jus belli*, and so condemnable as prize; nor property of Americans proceeded against under the Confiscation Acts; nor such property held in virtue of the two Abandoned Property Acts.

The next thing to do would be to establish regulations and forms of examination on notice, for cases as to which the Secretary of the Treasury intends to assume to remit in his discretion, as he lawfully may, without waiting for the certificate of a district judge. And, as the power of regulation, conferred on the Department by these Non-intercourse Acts, is ample in other respects, it might, perhaps, be well to make provision as to the institution of proceedings in these cases on the instance side of the admiralty courts, and as to needful appeals to the Supreme Court.

I have the honor, in conclusion, to state, as the legitimate result of the foregoing reflections, that—

Inasmuch as by the express terms of the acts of July 13, 1861, May 20, 1862, and August 6, 1861, and of the proclamation of the President of August 16, 1861, the Secretary of the Treasury is charged specially with the execution of these acts;

And inasmuch as the forfeitures pronounced by these acts are in and by the same expressly declared to accrue to the Treasury, with power of remission or mitigation in certain cases;

And inasmuch as these acts still remain unrepealed, and of full force, except in so far as they may have been modified by the acts of March 12,

1863, and July 21, 1864, which also give exclusive jurisdiction to the Treasury Department;

Therefore, if any condemnations in prize have taken place, attaching to property and cases coming within the apparent purview of these acts, it is my opinion that, in the mere and plain discharge of his administrative duties, and in the judicious exercise of a sound and wise discretion, the Secretary of the Treasury may well and lawfully suspend the distribution of the proceeds of all such condemnations, until whatever there be of questionable, if any thing, in the true construction of the acts, shall have been definitively determined, in a proper case or cases before it, by the Supreme Court of the United States.

I am, very respectfully,

Your obedient servant,

C. CUSHING.

The Hon. HUGH MCCULLOCH,

Secretary of the Treasury.

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM.—1866.

STEAMER GREY JACKET AND CARGO
vs.
THE UNITED STATES. } No. 84.

Brief for the Treasury Department.

1. On the facts apparent in the original record, the Grey Jacket and her cargo, if condemnable, were condemnable only under the provisions of the act of July 13, 1861, (*Stats. at Large, vol.* 12, *p.* 255,) the supplementary act of Congress of May 20, 1862, (*ibid, p.* 404,) and the proclamation of the President, in completion thereof, (*ibid, p.* 1262.)

2. As a doctrine of public law and the law of nations, it is certain that in all cases of rebellion, civil war, hostilities carried on between the legitimate sovereign and his insurrectionary subjects, the municipal power of such sovereign continues perfect, and unimpaired of right, although it be temporarily interrupted in some part or parts of his dominion, even to the degree of constituting territorial war by land and sea, including blockade of coasts.

Rose *vs.* Himely, 4 Cranch, 241.
Hudson *vs.* Guestier, 4 Cranch, 293.
Cherriot *vs.* Foussat, 3 Binney, 292.
1 East's Pl. of the Cr., 104.
Ryan's Case, 2 Wooddeson, 427, Note *a.*
Halleck's International Law, p. 344.
Upton's Maritime Law, p. 212.
Ayala, De Jure et Officiis Bellicis, ch. 2.
Heffter, Droit International, pp. 220, 232.
Dana's Wheaton, p. 377, *note.*

3. During the late unsuccessful attempt of certain persons in the United States to effect the dissolution of the Government thereof, and set up another and separate Government within the confines thereof, notwithstanding that said attempt culminated for awhile into hostilities having some of the properties of territorial war, including blockade of coasts, still the jurisdiction of the United States continued to be perfect of right

throughout the constitutional limits thereof, and was constantly and consistently asserted as such by the executive, legislative, and judicial authorities thereof, from the beginning to the end.

(*a.*) The Executive. Proclamations, *passim:*
Ex. gr., April 15, 1861, Stats. at Large, vol. 12.
April 19, 1861, *ibid*, p. 1258.
April 27, 1861, *ibid*, p. 1289.
May 3, 1861, *ibid*, 1500.
May 10, 1861, *ibid.*
September 22, 1861, *ibid*, p. 1267.
January 1, 1867, *ibid*, p. 1268.
December 8, 1861, *ibid*, vol. 12, p. 737.
May 29, 1865, *ibid*, p. 788.
April 2, 1866, *ibid*, vol. 14, Ap.

(*b.*) The Legislative. Acts of Congress, *passim:*
Ex. gr., Revenue Act, July 31, 1861, Stats. at Large, vol. 12, p. 257.
Capture Act, August 6, 1861, *ibid*, p. 319.
Confiscation Act, July 17, 1862, *ibid*, p. 590.
Abandoned Property Acts, March 12, 1863, and July 2, 1864, *ibid*, vol. 12, p. 820, and vol. 13, p. 375.

(*c.*) The Judicial.
The Prize Cases, 2 Black, pp. 635, 673.
The Revere, 24 Law Rep., p. 276.
The Amy Warwick, *ibid*, p. 346.
Smith's Trial, p. 96.
The Savannah, p. 368.
Certain Packages, 2 Amer. Law Reg., N. Y., p. 419.
Dana's Wheaton, p. 196, *note.*
Opinions of Courts, appended to this Brief.

4. Hence, the act of July 13, 1861, and the acts supplementary thereto, and other analogous acts, were a rightful exercise of the sovereignty of the United States.

Independently of numerous decisions in the courts below, it has been expressly so adjudged by this court.

The Venice, 2 Wallace, p. 288.
Mrs. Alexander's Cotton, *ibid*, 404.
The Reform, 3 Wallace, p. 617.

5. According to the universal public law and law of nations, prize of war belongs of right to the sovereign, and distribution thereof among citizen or subject captors, in part or in whole, is not a right *jure belli*, but an act

of grace in the discretion of the sovereign, precisely as with the distribution of revenue forfeitures.

3 Phillimore's Int. Law, p. 189.

The Elsebe, 5 Rob., p. 173.

Alexander *vs.* Duke of Wellington, 2 Russell & Mylne, p. 54.

Thirty Hhds. of Sugar *vs.* Boyle, 9 Cr., 191.

"The sole and exclusive right to all prizes vests in the Government, and no individual can acquire any interest therein, unless under its grant and commission. * * And the Government, in such case, do not take the property as droits of admiralty, but strictly and technically *jure reipublicæ*. In order to decide on the rights of captors in the United States, it is necessary to look into the laws which the Legislature have created on the subject; for no beneficial interest can pass to them beyond the terms of grant which have been made by Congress."—(*The Joseph*, 1 *Gall.*, *pp.* 544, 558.)

6. There is nothing in the language of the Prize Acts of April 23, 1800, (*Stats. at Large, vol.* 2, *p.* 45,) and its supplements, in force at the enactment of the Revenue Forfeiture Act of July 13, 1861, nor in the language of the acts, subsequent thereto, of March 25, 1862, July 17, 1862, March 3, 1863, and June 30, 1864.—*Stats. at Large, vol.* 12, *pp.* 374, 600, 759; *vol.* 13, *p.* 306.)

These acts provide for the adjudication of prize, and custody and distribution of prize money; nothing more, nothing less.

7. The Revenue Forfeiture Acts, if there be any supposable conflict of law between them and the Prize Acts, are to be deemed of paramount force, of that each class of acts is alike the declaration of the sovereign will, and that the Revenue Forfeiture Acts are the special declaration of that will, *quoad hoc*, that is for the case of Rebellion as distinguishable from Foreign War.

8. Whatever question in this relation, if any, might arise regarding *foreign* captures, there can be none regarding *domestic* captures, that is, captures of property of citizens of the United States for the cause of rebellion.

9. The question is of new impression in this court. Older adjudications in the case of foreign war do not apply. In two or three recent cases, where the question might have been raised, but was not, there was, of course, no adjudication of this point, either express or implied.

10. The right of revenue forfeiture, as against prize, in such a matter as the present, has been assumed by each succeeding Secretary of the Treas-

ury. Read and comment on the cases exhibited in the Appendix to the Claimant's Additional Answer.

10. The paramount force of the Revenue Forfeiture Acts has been affirmed in various cases before district and circuit courts of the United States.

See the cases before Justice Grier and Judge Cadwallader, above cited.

United States *vs.* Bbls. of Cement, 3 Am. Law Reg.; pp. 735 and 747.

~~The Sarah Starr and the Argobuth, Blatchford's Prize Cases, p. 69~~

U.S. v Wally, appended to the Brief

All which is respectfully submitted, by

C. CUSHING,
Of Counsel.

OPINIONS

OF

THE UNITED STATES COURTS

FOR THE

EASTERN DISTRICT OF MISSOURI AND FOR THE SOUTHERN DISTRICT OF ILLINOIS,

UPON

CASES DECIDED IN THOSE COURTS,

INVOLVING THE CONSTRUCTION OF

THE NON-INTERCOURSE AND CAPTURED PROPERTY ACTS,

AND THEIR RELATION TO

THE PRIZE ACTS.

WASHINGTON:
TREASURY DEPARTMENT.
1866.

ur
C

at
S

OPINIONS

OF

THE UNITED STATES COURTS

FOR THE

EASTERN DISTRICT OF MISSOURI AND FOR THE SOUTHERN DISTRICT OF ILLINOIS,

UPON

CASES DECIDED IN THOSE COURTS,

INVOLVING THE CONSTRUCTION OF

THE NON-INTERCOURSE AND CAPTURED PROPERTY ACTS,

AND THEIR RELATION TO

THE PRIZE ACTS.

WASHINGTON:
1866.

REVENUE CASES.

UNITED STATES
vs.
269½ BALES OF COTTON,
WOLF AND OTHERS, CLAIMANTS. } Nos. 939 and 940.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FEBRUARY TERM, 1863.

HON. SAMUEL TREAT, JUDGE.

Captures of rebel property, whether on land or sea, are not prize of war *jure belli*.
Where acts of Congress authorize the capture and condemnation of such property, it is in virtue of the municipal law only, and not of the law of nations.
The jurisdiction of all such cases is on the instance side of the court.
Discussion of the relation of the law of nations and of the municipal law, respectively, in the constitutional government of the United States.

The questions raised by the exceptions now under consideration have been argued and will be treated together. They relate to and affect each of the libels, and cannot be well understood if discussed separately. They involve not only rules of pleading and practice, but grave propositions of public and constitutional law. The importance and intricacy of the questions demand more than an ordinary elaboration and analysis of the doctrines involved.

Some of the propositions have been so confused by a disregard of fundamental principles, and have been so long in dispute, both in Great Britain and the United States, and others are so entirely new to American jurisprudence, especially in the West, that it is difficult to present the views of the court clearly, within the ordinary limits of a judicial opinion. If the decision of every point presented in the argument was necessarily involved in the conclusions reached, it would be impossible to give the reasons on which those conclusions rest without an exhaustive discussion both of principles and of authorities. It must suffice, how-

ever, to condense, so far as practicable, what bears most directly upon the exceptions filed; leaving for further argument and decision such other questions, however important, as are not necessary to the present cases.

The first libel purports to be based on the confiscation acts of Congress, approved, respectively, August 6, 1861, and July 17, 1862; the second libel, on general prize law, *jure belli*, as supposed to be applicable on the western rivers to the existing insurrection. Whilst the first is on the *instance* side of the court in admiralty, and refers in terms to the two acts named; the second refers to no act of Congress, but avers, in one article, a military capture *on land by land forces*—"as prize of war," and that therefore the "*res* is forfeited and confiscated to the United States,' and in the second article to a coöperation in said capture by the officers and crew of certain *transport* vessels mentioned.

It is contended, that whilst the first suit, being directly based on the acts of August 6, 1861, and of July 17, 1862, necessarily involves their interpretation; the second rests, not alone upon the general principles of prize law *jure belli*, but also upon those two statutes, inasmuch as said statutes relate to the subject-matter of "captures," "prize," and "seizures" of rebel property.

Without following the order in which the points were presented, it may be well to first settle the leading *principles* upon which this decision must be made.

By the Constitution of the United States, the judicial power extends to "all cases of admiralty and maritime jurisdiction," to "all cases in law and equity arising under this Constitution, the laws of the United States," &c., and "to controversies to which the United States shall be a party." By the judiciary act, (September 24, 1789,) section nine, the district courts "have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts, as well as upon the high seas; and shall also have exclusive original cognizance of all seizures on land, or other waters than as aforesaid, made, and of all suits for penalties and forfeitures incurred under the laws of the United States." The act of August 6, 1861, after enumerating certain descriptions of property, proceeds as follows: "All such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

"Such prizes and captures shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admi-

ralty in any district in which the same may be seized, or into which *they* may be taken and proceedings first instituted."

The act of May 20, 1862, directs that "the proceedings for the penalties and forfeitures accruing under this act may be pursued" as in the act to which it is supplementary, viz., the act of July 13, 1861; which act says, "the proceedings on seizures and forfeitures under this act may be pursued in the courts of the United States in any district into which the property so seized may be taken and proceedings instituted, and such courts shall have and entertain as full jurisdiction over the same as if the seizure was made in that district."

The act of March 25, 1862, after making several provisions with respect to the modes of proceeding in prize cases, says: "The provisions of this act shall apply as well to cases now pending as to *all future cases of maritime captures*, and to captures and seizures made under the laws for the abolition of the slave trade." This act prescribes also certain duties for prize commissioners "whenever any property *captured* as *prize* shall be brought into any district of the United States for adjudication," also for the marshal, &c. [The provisions of this act, so far as they relate to the custody of proceeds of sales, are in conflict with the provisions of the act of July 17, 1862, "for the better government of the Navy of the United States," section twelve; and the last-named act is in conflict with the joint resolution of the same date. Both purport to relate to prize cases, *as such*, so far as custody of funds is concerned. And the act of March 25, on the same subject, seems to bring within its purview all *maritime* captures.] The act of July 17, 1862, "to suppress insurrection," &c., provides "that to secure the condemnation and sale of any such property, after the same shall have been seized, so that it may be made available for the purpose aforesaid, proceedings *in rem* shall be instituted in the name of the United States in any district court thereof," &c., "within which the property above described, or any part thereof, may be found, or into which the same, if movable, may first be brought; which proceedings shall conform as nearly as may be to proceedings in admiralty or revenue cases," &c., to be "condemned as enemies' property."

It is unnecessary to quote from other acts in order to present fully the points to be determined.

The judiciary act gives jurisdiction of "all *seizures* on land" as well as water, and "of all suits for penalties and forfeitures" incurred under United States laws. The act of August 6, 1861, without defining the jurisdiction specially, declares the property named in it "lawful subject of prize and capture *wherever found*," to be proceeded against either in the United States circuit or district courts, according to their respective jurisdictions as previously established. There can be no doubt that the property embraced in that act covers all such as may be acquired, used,

&c., on *land* as well as water; that its provisions were designed to embrace both land and maritime captures of such guilty property.

But it is urged that the jurisdiction conferred by the Constitution of the United States on the United States judiciary does not extend to *land captures*, and that, if it does, it is not by virtue of the clause granting cognizance of "all cases of admiralty and maritime jurisdiction;" that the clause in question has a distinct meaning, and cannot be so enlarged by any declaration of Congress that cases not within its purview at the time of the adoption of the Constitution can be hereafter treated as if embraced within it. The doctrine thus invoked is too well settled for dispute. Were it otherwise, the Constitution would be as vague, uncertain, intangible, and evanescent as is the British under the theory of Parliamentary omnipotence. If Congress can declare a case to be within admiralty and maritime jurisdiction which is not constitutionally so, and thereby, despite the plain intent of the Constitution, extend the limits of federal or judicial power, it is virtually as omnipotent as the British Parliament. It can alter, amend, or abolish the United States Constitution by a simple declaratory act, as to any provision thereof which it may choose to thus change or destroy.

But such an act would have no such effect; it would be simply void—a mere nullity. No one contends for a different doctrine.

What, then, was the *prize* jurisdiction of admiralty courts at the time the United States Constitution was adopted? This is a very difficult question. After as full an examination of all accessible authority as possible, the subject is not freed from embarrassment. It appears that, in England, the *common law courts* had no jurisdiction of hostile captures, as such, on land or water. Lord Mansfield, in *Lindo* vs. *Rodney*, (*Douglas*, 591, in a note,) gives his views at great length on that point, after an elaborate examination of British authorities. He says: "The court of admiralty is called the instance court—the other the prize court;" that is, the court created in each war by the King's commission "to hear and determine, according to the course of admiralty and the law of nations," "upon all, and all manner of captures, seizures, prizes, and reprisals, of all ships and goods that are or shall be taken."

"The manner of proceeding is totally different. The whole system of litigation and jurisprudence in the prize court is peculiar to itself; it is no more like the court of admiralty than it is to any court in Westminster Hall. From 8th Elizabeth, chap. 5, it appears that in *civil and marine causes* there were many appeals, which the statute restrains to one to the King in chancery, to be finally decided by delegates. But prize is not a civil and marine cause, and the appeal lies to commissioners, consisting of the Privy Council.

A thing being done on the high seas does not exclude the jurisdiction

of courts of common law. For seizing, stopping, or taking a ship upon the high seas not *as prize*, an action will lie; but for taking such *as prize*, no action will lie. The nature of the question excludes, not the locality."

The restrictive statutes of *Richard and Henry*, and subsequent prohibitions, he insisted, had reference to the *instance* courts alone, not to *prize* courts.

"The nature of the ground of action, prize or no prize, not only authorizes the prize court but excludes the common law." Instance courts were confined by the locality, to the high seas, *extra corpus comitatus;* but prize tribunals extended over hostile captures in British as well as foreign ports, harbors, and havens. Naval expeditions, he says, are with a view to operations on land as well as sea, if occasion offers. "It is not by accident, therefore, that the words of the commission are general; all manner of captures, seizures, prizes, and reprisals of all ships and goods—it don't say upon the sea—it don't say goods in the ship—reprisals is the most general word that could be used." "In causes *civil and marine*, to give jurisdiction to the court of admiralty, the libel must allege the cause of suit to be done on the high seas."

After mentioning the mischievous consequences to flow from any other doctrine, he adds: "By the law of nations and treaties, every nation is answerable to the other for all injuries done, by sea or land, or in fresh waters, or in port. Mutual convenience, eternal principles of justice, the wisest regulations of policy, and the consent of nations, have established a system of procedure, a code of law, and a court, for the trial of prize. Every country sues in these courts of the others, which are all governed by one and the same law, equally known to each. The claimant is not obliged to sue the captors for damages, and undergo all the delay and vexation to which he may think himself liable if he sues by a form of litigation of which he is totally ignorant, and subjects his authority to the rules and authority of a municipal law by which he is not bound. In short, every reason which created a prize court as to things taken upon the high seas, holds equally when they are thus taken on land. * * * The question, '*prize or no prize*,' is the boundary line; and not the locality of land or sea, or port within the body of a country of the realm."

It may well be remarked here that the general reasoning of Lord Mansfield, as to the importance and propriety of similar rules for captures both on land and water, has been urged by publicists and diplomatists quite frequently; yet the broad distinction between captures on land and sea, continues unchanged to the present day. The historic, and other causes leading to such a distinction are easily traceable. Maritime jurisdiction owes its form, if not its origin, chiefly to the celebrated sea ordinances adopted by maritime powers and cities, in the interests of commercial intercourse. The high seas, *which are common* to all nations, required an international

code for the benefit of all, *a common* law for the seas; and during wars between different maritime powers, the rights of neutrals to use the common highway, despite controversies or hostilities to which they were not parties, necessarily led to some acknowledged mode of adjudication. Hence the laws of maritime prize and prize courts, from which, in modern times, most of the important rules of international law are learned.

Notwithstanding the positive statements of Lord Mansfield, in the foregoing opinion and his collection of cases, yet he reaches this conclusion: "As to plunder, or booty, in a mere continental land war, without the presence or intervention of any ships, or their crews, it has never been important enough to give rise to any question about it. It is often given to the soldiers on the spot, or wrongfully taken by them contrary to military discipline. If there is any dispute, it is regulated by the commander-in-chief. *There is no instance, in history or law, ancient or modern, of any question before any legal judicature ever having existed about it in this kingdom.* To contend that such plunder was within the rules and jurisdiction of the prize court, might be opposed by the subject-matter, the nature of the jurisdiction, the person to whom it is given, and the rules by which he is to judge. Therefore, the counsel have confined their argument to reprisals ashore by a *naval* force; at least, I shall consider it so confined, *without entering into any question about booty in a mere land war, as to which I have no light to go by, and it is not now necessary to be decided; neque teneo, neque dicta refello.*"

Thus it is clear, that the point presented here he expressly refrained from deciding. He said he had no light to go by; that in England there was no instance in history or law, of any such adjudication. If, after his diligent researches, he was forced to such an admission, we might well despair of finding English authority on the question.

Mr. Justice Buller, in *Le Caux* vs. *Eden*, (*Douglas*, 588,) states that "the authorities are the other way, and so, also, is the principle—[viz: that common-law courts have prize jurisdiction]—for the principle is, that the question, "prize or no prize," and the consequences of it are conusable solely in the admiralty court; the true reason of which is, that prizes are acquisitions *jure belli*, and the *jus belli* is to be determined by the law of nations, and not by the particular municipal law of any country."

It must be remembered that Lord Mansfield was passing upon an application to Westminster Hall for a prohibition on the admiralty court to prevent its proceeding in certain prize cases resulting from the captures at St. Eustatius. He held that the common-law courts had no jurisdiction, and therefore refused the writ.

We find references, in documents of that period, to Rodney's expedition, which justify the remarks of counsel in 1 *Bay*, 22, viz: "The case of Sir George Rodney (*Doug.*, 592) at St. Eustatius, where the principal

part of the captures was made on *land*, was next relied on. He was an admiral, entrusted with the command of a fleet, when he took that island; and General Vaughan, who was with him, commanded the land forces; and although they took upon them to fleece the unfortunate Jews of all the money and valuable effects they had, as well as others who traded on that island, and gave orders for the sale of the whole of their property, yet all Europe was exasperated at this conduct. It was considered a most wanton abuse of power, a violation of the laws of nations, and nothing less than downright robbery and plunder. The court of admiralty in England was impressed with the same idea; for it gave no sanction to so unwarrantable a proceeding; and restitution was decreed, as far as it was possible to identify the property of the sufferers."

It appears that the captures were made by a *conjoint* naval and land expedition, and that the admiralty court thus obtained jurisdiction, as in other cases of joint capture. The extent to which naval forces were permitted by Great Britain to make land descents has been often passed upon. The doctrine is distinctly laid down, that *private* property on land cannot be taken by naval or privateering expeditions under English laws or commissions. That is a right which the sovereign reserves to himself; and the captors get nothing. This rule is established to prevent the plundering of private persons on coasts, and all marauding expeditions.

Hence the learned discussions concerning the language of "commissions" issued to naval commanders and privateers, and the efforts sometimes made to deduce the right from the words "on sea and land," as used therein, have resulted merely in settling the rule more firmly, viz., that such expeditions are always confined to forts, &c., on the *sea coast*, and to the *public* property taken at *such* places on land—to those operations on land which belong appropriately to *naval* warfare, such as the reduction of coast and harbor defences, and expeditions in the immediate neighborhood upon which such defences may depend for support, save only those special instances in remote parts of the world to which Lord Stowell has guardedly alluded.—2 *Wildman*, 314; *The Thorshaven*, *Edw. Ad.*, 102–13; *Chinsurah*, 1 *Acton*, 179; *The Two Friends*, 1 *Rob.*, 271, 284; *The Stella del Norte*, 5 *Rob.*, 349; *The Dordrecht*, 2 *Rob.*, 55; *The Rebeccah*, 1 *Rob.*, 227; 3 *Phill.*, 499; *The Genoa*, 4 *Rob.*, 388; *The Joseph*, 1 *Gall.*, 545, and 8 *Cranch*, 456; *The Rapid*, 1 *Gall.* 295; 8 *Cranch*, 155; and 3 *Phillimore*, 194. Contra.—*Jenkins* vs. *Putnam*, 1 *Bay.*, 8; *Brown* vs. *United States*, 8 *Cranch*, 110.

Lord Tenterden, after pronouncing "the proper character of a transaction on land to have been that of hostile seizure, made, if not *flagrante bello*, yet *nondum cessante bello*," decided that consequently "the municipal common-law courts had no jurisdiction to adjudge upon the subject," (*Elphinstone* vs. *Bedreechund*, 1 *Knapp, P. C. Rep.*, 360.) It may be considered the

well-settled doctrine in all British courts, that the common-law courts of that country, as such, have no jurisdiction over hostile captures, or captures *jure belli*. It has been said that the absence of prize cases on land in English courts arises from the insular position of that country, (*The Recovery*, 6 *Rob.*, 341;) but may not the fact be also due to the distinction heretofore alluded to, viz: that in land captures rights of neutrals are seldom affected? When a belligerent force enters the country of an adverse belligerent, it exercises an admitted right of belligerency, but it cannot invade *neutral* territory. On the high seas a belligerent has rights only in common with neutral nations, and must so act as to not injure neutrals. Captures on land have generally been confined to *public* property, and been retained by the sovereign. In some instances he has given captors an interest therein, or made a grant to them of a portion of its estimated value. That is not, however, the common rule.—3 *Phillimore*, 189; *Alexander* vs. *Duke of Wellington*, 2 *Russ. & Mylne*, 35; *French Guiana*, 2 *Dods.*, 151; *The Genoa*, 2 *Dods.*, 446.

As captures of all kinds belong to the sovereign, "*parta cedunt reipublicæ*," there can be no interest therein for the captors except by grant. The paucity of such grants in land captures, and, where they exist, the commutation therefor in money, will account for the absence of decisions. Justice Buller gives the true reason for the absence of municipal jurisdiction—*all such cases are determined by the law of nations, and not by municipal codes.* In England, the sovereign, at the commencement of each war, issues a commission of prize, and also may prescribe the mode of passing upon land captures. Jurisdiction in maritime captures denominated *prize*, and in land captures called *booty*, is granted to different tribunals in England, as will be seen more fully hereafter.—3 *Phillimore*, 189, *et seq.*; *The Joseph*, 1 *Gall.*, 545; *Wh. El.*, 405; *Cook* vs. *Howard*, 13 *Johns.*, 376; *Slocum* vs. *Wheeler*, 1 *Conn.*, 446; *The Rebeccah*, 1 *Rob.*, 227, 230, 286; *The Genoa*, 2 *Dods.*, 446; *United States* vs. *Betsey and Charlotte*, 4 *Cranch*, 452.

In confirmation of the remark of Justice Buller, we have many express decisions. Prize courts are not municipal tribunals governed in their procedure and rules of decision by municipal regulations, but by the laws of nations. In the case of "The Recovery," (6 *Rob., Adm. Rep.*, 348,) Lord Stowell said: "It is to be recollected that this is a court of the *law* of nations, though sitting here under the authority of the King of Great Britain. It belongs to other nations as well as our own; and what foreigners have a right to demand from it is, the administration of the law of nations simply, and exclusively of the introduction of principles borrowed from our own municipal jurisprudence."

In "The Fox," (*Edw. Adm.*, 312:) "In the course of the discussion a question has been started, What would be the duty of the court under

orders in council that were repugnant to the law of nations? * * * I observe that this court is bound to administer the law of nations to the subjects of other countries in the different relations in which they may be placed towards this country and its government. * * * This is its unwritten law, evidenced in the course of its decisions, and collected from the common usage of civilized States."

Sir James Mackintosh decided that in case "illegal instructions"—that is, instructions against the laws of nations—were issued by his sovereign, "it would be the duty of a judge to disregard them, and to consult only that universal law to which all civilized States and princes acknowledge themselves to be subject, and over which none of them can obtain any authority."

The judicial committee of the Privy Council held the same doctrine in 1855. (*The Otsee;* see, also, American cases, cited hereafter, upon the war powers of the United States government, and especially "*The Charming Betsey,*" 2 *Cranch*, 64.) Nor is rigid adherence to that rule, in theory at least, insisted upon only by British prize courts. It springs necessarily from the fundamental ethics of public law and the relations of independent States with each other. In the family of civilized nations all are equal, bound together by a common law, and entitled to the same respect and privileges. That public society is thus described by Seneca:

"*Membra sumus corporis magni, natura nos cognatos, edidit, quum ex iisdem et in eadem gigneret. Haec nobis amorem dedit mutuum, et sociabiles fecit.*"

A sentiment concerning the social state remarkable for its similarity of expression to that of St. Paul, who was nearly a contemporary:

"All the members of that one body, being many, are one body; and whether one member suffer, all suffer with it * * that there should be no schism in the body, but that the members should have the same care one for another."

From the society of nations springs the necessity of that universal law, to be recognized by international tribunals as always controlling; which Cicero has thus described:

"*Neque erit alia lex Romæ, alia Athenis, alia nunc, alia posthac; sed et omnes gentes et omni tempore, una lex, et sempiterna et immutabilis continebit, unusque erit communis quasi magister et imperator omnium Deus. Ut jam universus hic mundus una civitas est, communis Deorum et hominum existimanda.*"—*S. C. Wheaton's Hist.*, 171; 1 *Duer*, 445; 1 *Gall.*, 575; 1 *Rob.*, 284; 4 *Cranch*, 241, 293; 9 *Cranch*, 284; 3 *Dall.*, 16; 1 *Pet.*, 542; 13 *Howard*, 498; 18 *Howard*, 112; 2 *Cranch*, 64.

If, then, prize courts, however constituted, are courts of international and not of municipal jurisdiction; and if they have sprung into existence partly, if not chiefly, with reference to the rights of neutrals upon a common highway; and if they have been confined to matters of *prize*, as con-

tradistinguished from *booty*, it is important to consider more accurately the line of distinction between the two classes of cases, in order to ascertain whether admiralty and maritime courts, as such, had any jurisdiction of land captures by land forces, or of land captures by naval forces beyond the coast, except as before mentioned. In the case of "The Genoa" (2 *Dods.*, 446) it was held that "prize means maritime captures only—ships and cargoes taken by ships. A land force has no interest in *prize property so called*. What a land force takes by itself is not *prize*, but *booty*. Under the British prize acts it relates to captures made by ships only; if land force is employed, its title is not recognized." This rule is quoted and recognized in 1 *Hagg.*, 32. See also 2 *Wildman*, 314; "The Thorshaven," *Edw. Adm.*, 102; "The Rebeccah," 1 *Rob.*, 127, 230, (*Note*,) 286.

In 3 *Phill.*, 185, 191, (side,) the modes of proceeding in *booty* cases is given; and an accurate examination of the authorities referred to fully supports the text. At the time the American Constitution was adopted, neither admiralty courts in Great Britain nor the municipal courts of that country had jurisdiction of *booty*. Subsequent British statutes have enabled the admiralty courts to take such jurisdiction. Prior thereto, the only cases that arose were *quasi* maritime captures, where *naval* descents were made on fortified places or towns on the coast.

Martens (288–9) speaks of *booty* as "movable property taken from the the vanquished *soldiers*." Vattel (364) says "towns and lands are conquests; movable property taken from the enemy is called *booty;*" and he restricts booty, to "*the spoils of the battle-field and of camps and towns carried by storm or assault.*" In *Wheaton's Elements of International Law*, (*p.* 395,) it is stated that "private property on land is also exempt from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field, or in besieged towns, and of military contributions levied upon the inhabitants of hostile territory. This exemption extends even to the case of an absolute and unqualified conquest of the enemies' country."

The bucanneering expeditions in the time of Queen Elizabeth, and the gross violations of the rules of civilized warfare which have frequently occurred since, cannot be justly relied upon in opposition to modern publicists.

Those outrages have been sometimes the subject of apology or attempted excuse, on the ground of necessary retaliation. Diplomatic history is full of such cases. The United States have always been foremost in denouncing such action. During the war of 1812, the American Secretary of State disavowed, in the name of the government, all such outrages when perpetrated by our forces in Canada or elsewhere.

He declared that the "government owed it to itself and to the princi-

ples it had ever held sacred, to disavow, as justly chargeable to it, any such wanton, cruel, and unjustifiable warfare. Whatever unauthorized irregularities might have been committed by any of its troops, it would have been ready, acting on the principles of sacred and eternal obligation, to disavow, and, as far as might be practicable, to repair."—(*Wh. Elements*, 399.) And, in reply, it was stated in behalf of the British government "that it was as little congenial to the disposition of the British government as it was to that of the United States, deliberately to adopt any plan of hostilities which had for its object the devastation of private property."—*Wh. El.*, 400.

The burning of the city of Washington has been considered a gross violation of the laws of war; and so were the outrages perpetrated in the peninsula under British commanders, and the plunder of Italian and other cities by Napoleon. The principle was recognized in the treaty at Ghent, by which both the United States and Great Britain stipulated to restore all private property taken during the war. The elaborate discussion which followed that treaty, especially the able dispatches by the American Minister and Secretary of State, so fully vindicate the doctrine laid down by Wheaton as to justify Mr. Marcy in assuming, in his elaborate dispatch to the Minister of France on privateering, (in response to the proposition of the Five Powers,) that private property on land is no longer considered lawful subject of capture. True, the case of Brown *vs.* The United States (8 *Cranch*, 110) seems to decide that all enemy property within the *territorial* jurisdiction of a belligerent may be confiscated as prize of war, and that all such property, whenever captured, is lawful prize. In Ware *vs.* Hylton, (3 *Dall.*, 199,) the most extended right was asserted. It is not necessary to analyze the former case to ascertain the points really decided—whether it is to be treated as going further than this: even if enemy property within the territorial jurisdiction of a belligerent were confiscable as prize, yet, until Congress passes an act for the enforcement of that extreme right, it is not to be captured and condemned. Nor is it proper at this stage of the discussion to go into an inquiry as to the effect later decisions upon the rights of *conquest* must have in modifying those extreme opinions.

It may suffice to intimate here, that the views expressed by the United States Supreme Court in several subsequent cases seem to be wholly irreconcilable with such extreme doctrine. Our diplomatic history is based on an entirely different theory. In 7 *Peters' Rep.*, 86, Chief Justice Marshall thus states the law of conquest: "The modern usage of nations which has become law would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would

be outraged, if private property should be generally confiscated and private rights annulled."

No little light may be had on this subject from an examination of the following authorities: 1 *Peters*, 542; 3 *Peters*, 122; 4 *Peters*, 511; 7 *Wheaton*, 104; 10 *Peters*, 720–9; 9 *Peters*, 137, 147, 733; 9 *How.*, 603; 16 *How.*, 164. Also, 3 *Cal. Rep.*, 445; 8 *Ib.*, 165; 15 *Ib.*, 559; 16 *Ib.*, 220; 3 *Phill.*, 118.

Wheaton, in his Elements of International Law (*p.* 344 *et seq.*) reviews the doctrine, and states: "There is a great diversity of opinions upon this subject among institutional writers, and the tendency of modern usage between nations seems to be to exempt such property from the operations of war. * * * It appears, then, to be the modern rule of international usage, that property of the enemy found within the territory of a belligerent State, or debts due to his subjects by the government or individuals at the commencement of hostilities, are not liable to be seized and confiscated as prize of war." Such is the conclusion of that eminent publicist, whilst he admits that the rigid abstract rule as asserted in the case of Brown *vs.* The United States must still be considered a belligerent right.

On the same point Chancellor Kent holds (1 *Kent's Com.*, 91) that "there is a marked difference in the rights of war carried on by land and at sea." After stating that the capture or destruction of private enemy property is allowed in maritime war by the law and practice of nations, he proceeds thus: "But there are great limitations imposed upon the operations of war by land, though depredations upon private property, and despoiling and plundering the enemy's territory, are still too prevalent, especially when the war is assisted by irregulars. Such conduct has been condemned in all ages by the wise and virtuous, and it is usually punished by those commanders of disciplined troops who have studied war as a science, and are animated by a sense of duty or the love of fame." He cites ancient and modern examples on the subject, and closes his review of them with these just observations: "The general usage now is, not to touch private property upon land without making compensation, unless in special cases dictated by the necessary operations of war, or when captured in places carried by storm, and which repelled all the overtures for a capitulation. Contributions are sometimes levied upon a conquered country in lieu of confiscation of property, and as some indemnity for the expenses of maintaining order and affording protection. If a conqueror goes beyond these limits wantonly, or when it is not clearly indispensable to the just purposes of war, and seizes private property of pacific persons for the sake of gain, and destroys private dwellings, or public edifices devoted to civil purposes only, or makes war upon monuments of art and models of taste, he violates the modern usages of war,

and is sure to meet with indignant resentment and to be held up to the general scorn and detestation of the world."

Commenting upon the rule, as stated in Brown *vs.* The United States, he styles it "the ancient and sterner rule;" and says that "though this decision established the right contrary to much of modern authority and practice, yet a great point was gained over the rigor and violence of the ancient doctrine, by making the exercise of the right depend upon a special act of Congress;" that the doctrine of that case is "against the weight of modern authority." On the same question, see *Martens, pp.* 288 *et seq.; Vattel*, 364; *Polson*, 38 *et seq.; Wildman*, 9; *Wheaton's Elements*, 344, 395. Also, treaties between the United States and Great Britain of 1783 and 1814; between Great Britain and France in 1786; of Amiens and of Paris, March 30, 1814; and the following cases on the latter treaties, with reference to British property under French confiscation acts:

Pilkingston's case, 2 Knapp's Privy Council Rep., 7.

Solvin's case, 2 Knapp's Privy Council Rep., 350.

Bordien's case, 2 Knapp's Privy Council Rep., 353.

Genesis' case, 2 Knapp's Privy Council Rep., 345.

De Tastil's case, 2 Knapp's Privy Council Rep., 358.

Johnston's case, 2 Knapp's Privy Council Rep., 336.

From these cases and treaties, it is apparent with what little favor either the confiscation or sequestration of private enemy property within the country is received; and also that an act of confiscation, without seizure or actual sequestration, is considered as not passing title, &c.

The doctrine of the confiscability of private enemy property on land was seriously disputed in the Continental Congress, and during the American Revolution.—*Madison's Papers, pp.* 91, 105, 136, 144, 148, 235, 239, 490, 575. Also, *Ib. pp.* 735, 854, 866, 735, 740, 1226, 1232, 1347, 1550, 1612.

It is to be observed that *Wheaton* and *Kent* use very guarded language; they speak of modern usage and the weight of authority; but if the laws of nations, which all prize courts are bound to observe, are "the usage among civilized nations" and the *universal* rule, as described by Cicero and Lord Stowell, then it might be worthy of serious inquiry, what prize courts in the United States are bound to hold in such cases. It is not necessary, however, in the cases now before the court, to enter upon so serious and important a discussion. It is but just, nevertheless, to remark that the decisions of the United States Supreme Court, when thoroughly analyzed, will not, probably, be found in conflict with the weight of authority or modern usage. It is unfortunate, oftentimes, that what is said *arguendo*, is taken for a point decided, and that the reasoning of the judge who pronounces the decision is supposed, necessarily, to meet, in all its *dicta* or argumentation, with the solemn sanction of the court whose decision he

states. If the laws of permanent conquest, as frequently held by that court, do not *per se* divest private titles or disturb municipal rules and laws, then why is it, that a partial, temporary, and uncertain conquest, depending solely upon doubtful possession, gives greater rights and powers over private interests than full, permanent, and absolute dominion? The distinction is not to be overlooked, however, between the right of detention and of sequestration, *flagrante bello*, and the rights of permanent dominion. The necessary military operations may, at the moment, demand and justify many acts which, under other circumstances, would be wholly unjustifiable and worthy of universal detestation.

In thus presenting at more length than was at first intended the distinctions between *prize* and *booty*, the rules of war concerning captures on land and on water, and the principles by which prize, instance, and municipal courts are to be respectively governed, the necessity of much repetition has been avoided. It is essential to a right decision in these cases, that the true limits between those jurisdictions should be ascertained.

If a prize court is, in its very constitution, an international tribunal, controlled by the laws of nations, and not by municipal law, then the question must be met, whether a violation of a municipal statute can be pursued in a prize court, as *prize of war*, instead of a forfeiture, by force of the statute. It sometimes may be, that the municipal statute directs the proceedings for such forfeitures to be the same as in prize cases, *jure belli;* and then the modes of procedure, *quoad hoc*, must obey the statutory regulations. Still the court will not be a prize or international court, nor act as such in hearing such cases; but merely an instance or municipal court. The modes of pleading and practice in the two courts are very different, and must never be confounded. In the prize court, the essential allegation is "prize or no prize;" and the practice is to take proofs, in the first instance, solely *in preparatorio*, according to well-known rules therefor. No evidence is to be heard in contradiction thereof, (8 *Cr.*, 384; 2 *Gall.*, 249; 3 *Phill.*, 392, 416. In instance courts, the allegations must bring before the court the substantive facts on which the demand is based; and if the proceeding is for a forfeiture in consequence of a violation of a statute, (whether that statute be of non-importation, non-intercourse, embargo, or ordinary revenue regulations,) the allegations must bring the case within the statute. It is obvious that foreign nations, whether neutral or belligerent, have no right to interfere between a sovereign and his subjects in the administration of his municipal authority within his own exclusive jurisdiction; and, therefore, international law is not to govern. It is true, instance courts, in the administration of pure maritime law, adjudicate according to the recognized laws of nations, or general maritime rules, if the transaction undergoing investigation

occurred upon the high seas, or extra-territorially. Still, as Lords Mansfield and Stowell justly held, prize and instance courts are entirely distinct, as much so as courts of prize and of common law. Their proceedings cannot properly be confounded, and prize allegations be intermingled or joined with those belonging to the instance tribunals; because, first, the tribunals to adjudicate them are different; secondly, the modes of taking proofs are different; thirdly, the rules governing the proceedings, as to evidence and preparation for hearing, are unlike; and lastly, the codes of jurisprudence to be administered are separate and distinct.

The conclusion reached from the foregoing authorities is, that *admiralty* courts have no jurisdiction of land captures, *jure belli*, by land forces only; nor of land captures by the conjunct operations of land and naval forces, or by naval forces alone, except within the limits already named. Modern British statutes, under which *booty* cases may be referred to British admiralty courts, do not alter or enlarge the jurisdiction of American "prize" courts in admiralty.

Justice Story (1 *Gall.*, 375—"*The Emulous*") says: "However the question may be as to the right of admiralty to take cognizance of mere captures made on land exclusively by land forces, as to which I give no opinion, it is very clear that its jurisdiction is not confined to mere captures *at sea*." He then states the limitations as to naval captures alone, and as to joint captures, just as before settled by Lord Stowell and others, and adds: "For the determination, therefore, of the case before the court, it is not necessary to claim a more ample jurisdiction; for the capture or seizure, though made in port, was made while the property was water-borne. Had it been landed and remained on land, it would have deserved consideration, whether it could have been proceeded against as prize under the admiralty jurisdiction, or whether, if liable to seizure and condemnation in our courts, the remedy ought not to have been pursued by a process applicable to municipal confiscations. On these points I give no opinion."

It may be that sometimes a British or American statute (like that of August 6, 1861) declares certain property "lawful prize;" but, as no municipal statute can change the laws of nations, proceedings for such confiscations or forfeitures cannot be brought in a court administering only the laws of nations—or a prize court proper—but must be instituted in an instance or municipal court. This has been the uniform rule. Indeed, it is impossible, from principle, that it should be otherwise. In the case of "The Recovery," (6 *Rob. Adm. Rep.*, 344,) where an American vessel had been brought *as a prize* into England for a violation of the British colonial and navigation acts, Sir William Scott, sitting in a prize court, asked "by what authority it could be shown to be competent to the prize court of admiralty to proceed to confiscation of a foreign ship and

cargo for a breach of revenue?" The answer given by the proctor was, that the acts of Parliament "directed ships and cargoes so offending, taken at sea, to be brought in *as prize*, and empowered the court of admiralty to proceed upon them, which implied it to be an offence properly amenable to the jurisdiction of this court." In pronouncing the opinion of the court, that master of this department of jurisprudence thus decided: "There is a preliminary question, whether the case is properly brought before the court in its present form, that is, as a prize case. The court of admiralty is a court of revenue in one of its branches. * * * But I am now sitting in a court of prize, and the prayer that is addressed to that court is, that it would inflict the penalties of the revenue court on a foreign ship and cargo that is brought before it as a seizure of war. I should have been glad to have heard under what authority the court of admiralty could mingle its jurisdiction in this manner. As to the authority of precedents, I will take upon myself to say that *there are none*." He then discussed the broad distinction between rejecting the claim, in prize courts, of a British subject when his demand could be maintained only by showing a violation of a British statute, and of applying the same doctrine to a foreigner who was not amenable to that municipal law. His conclusion established the inflexible rule, before quoted, viz: "This [the prize side of the court] is a court of the law of nations. * * * And what foreigners have a right to demand is, the administration of the law of nations simply, and exclusively of principles borrowed from our own municipal jurisprudence. * * * In the case of a British subject it is different. To him it is a British tribunal, as well as a court of the law of nations; and if he has been trampling on the known laws of his country, it is no injustice to say that a person coming into any of the courts of his own country, to which he is naturally amenable, on such a transaction, can receive no protection from them. * * * On these grounds, therefore, I shall pronounce that neither directly nor indirectly is it a question which I am at liberty to entertain in a prize court; not pronouncing on the question of law, [the meaning and application of the British statutes,] but declining to enter into that discussion for want of competent jurisdiction." And, therefore, he ordered restitution.

The position of a claimant in a prize court who has violated the municipal laws of his country, as for instance its prohibitory statutes, especially in the particular transaction under adjudication, has been treated in the same way by all American prize courts. The reason of such a rule may be briefly given: He is an *actor* and must make out his claim. If in his effort to establish it he shows that his title or interest is forfeited to the government for a breach of its laws, he thereby proves he has no interest in the *res* entitling him to be a claimant at all; and, fur-

ther, he calls upon the court to aid him in consummating a fraud upon the law; he appears with unclean hands, and seeks to make the court the instrument of defeating the laws it is bound to enforce.

United States *vs.* Steamboat Champion was a case in which that point was decided by this court in December, 1861, and the principles as well as authorities fully commented upon. (See *Wheaton on Capt.*, 225; *The Gran Para*, 7 *Wheaton*, 483; *The Bello Corunnes*, 6 *Wheaton*, 169; 8 *Wheaton*, 147; 8 *Cranch*, 276, 382, 398; 12 *Wheaton*, 1, 486; 1 *Pet.*, 547; 1 *Gall.*, 513; 2 *Rob.*, 77.

In a trade prohibited by statute, mistake or absence of bad faith does not protect. *Ita lex scripta est;* and, the prohibition being absolute, all trade forbidden is illicit. (1 *Duer*, 523–7; 4 *Rob.*, 118, 121; 5 *Rob.*, 283; 2 *Rob.*, 25; 2 *Wildman*, 48; 1 *Rob.*, 14, 17, 22, 102; 3 *Rob.*, 41; 4 *Wheat.*, 107; 2 *Gall.*, 268; 7 *Pet.*, 586; 1 *Gall.*, 545; 8 *Cranch*, 451; *Marriott's Decisions*, 76.) And in foreign war, all commercial intercourse is inhibited by the laws of war. (*The Rapid*, 8 *Cranch*, 155; *S. C.*, 8 *Cranch*, 169, 382.)

The distinction thus taken by Sir William Scott is inherent, not in the organization of the *British* courts alone, but in the principles on which they rest. Hence, the proceedings in British admiralty, as well as in American courts, have conformed to the same inherent and fundamental rules. This will be more fully apparent in future references to authority. Indeed, if there were no cases to which to appeal for direct adjudications upon the point, the doctrine would be deducible, logically, from the elementary principles of international and municipal law. In the former, the rules of ethics and right reason, as applied to independent and equal societies or States, would necessarily obtain, irrespective of local, transient, or internal circumstances. What becomes a nation in its conduct towards equal sovereignties, may not become a sovereign in his treatment of his own subjects. In the former case he is an equal among equals, with no power over them to enforce his commands, and with no right, for the especial interests of himself or realm, to insist upon their obedience to such rules as he may prescribe. In the municipal administration of affairs he is guided by intra-territorial considerations; he is not bound to consult the wishes or adopt the internal policy of other sovereigns.

The people of each nation must determine their own internal form of government according to their own views of happiness and duty. It is a question with which foreign powers have no right to interfere. On no other principle is it possible for a nation to be independent or free. But, as one of a family of nations, it must consult the well-being and safety of all—or, at least, do nothing to injure unnecessarily the equal rights of others.

In that relationship there is no common tribunal to which they can

appeal for an impartial adjudication of their controversies; hence the *ultima ratio regum*—the dread arbitrament of arms. The nearest approach to such a tribunal is a prize court—a tribunal which, it is said, each maritime nation is bound in good faith and justice to provide, for a just application of international rules to all *maritime* captures and disputes. As the rules which such courts enforce are common to all civilized countries, it is obvious they should not be controlled in their decisions by the local, selfish, or transient interests of any one nation; in other words, they should be governed, not by municipal, but by international law. Hence, when an admiralty court, however commissioned, sits as a prize court to adjudicate upon questions of belligerent and neutral rights, its sphere of duty is necessarily different from that of municipal tribunals, and its action should accord with its duty. As in England the same judge presides on the prize and on the instance sides of the admiralty court, so it is in the United States. Indeed, the same judge, in this country, in other courts is often charged both with common law and equity duties; yet he never confounds the distinctive principles respectively applicable to them. So is it with this jurisdiction in admiralty. He has two distinct systems of jurisprudence to administer, and must never confound them.—(*Schooner Sally*, 1 *Gall.*, 401; 13 *How.*, 498; and the other cases cited elsewhere in this opinion.)

The practice in all civilized countries has generally conformed to these plain rules, and in no instance can it justly ignore them. Thus, revenue and navigation acts, in the United States and England, are sometimes enforceable on the admiralty or maritime side of courts, sometimes on the exchequer or common law side. If reference is had to the admiralty side, it is in instance or civil causes alone. The libels of information are based on municipal statutes, and the rules of pleading and procedure conform thereto. They are subject to municipal direction and control. As no nation can justly impose its laws upon other than its own subjects, or beyond its lawful jurisdiction, so other nations have no legitimate right to interfere with its municipal administration. Its municipal code—whether prohibitory or not—resting upon municipal sovereignty for its sanction, is to be enforced in such manner and by such tribunals as that sovereignty may create therefor. By whatever name known, they are still municipal tribunals. This distinction cannot be ignored without confounding essential principles applicable respectively to intra-territorial and extra-territorial action. Every magistrate, by whatever name known, whether King or President, who represents any portion of sovereign power, is, so far as his authority over internal affairs is concerned, only what the internal constitution of the country makes him. In his intra-territorial action he is to be judged by that constitution and the laws under it. But so far as all foreign nations are to be affected, he

must stand, if his own country so elects, as its representative extra-territorially or in its foreign affairs—as an independent and coequal sovereign among sovereigns.

Intra-territorially his power may be limited, and he may be amenable to municipal constitutions and laws for any abuse of his trust, domestic or foreign; but no foreign sovereign can call him to account for violation of municipal laws, but only for infractions of international laws which are exclusively extra-territorial in their operations or jurisdictional sphere. It is by not attending strictly to this immutable distinction that great errors often creep into grave discussions upon powers and duties. Constitutional law is intra-territorial; international law is extra-territorial. The former belongs to one nation alone for its internal government, and is cognizable by no other, except so far as it voluntarily subjects itself or its citizens thereto; the latter belongs to all nations, is universal, and controls the conduct and relations of States and peoples, as distinct societies, in all their intercourse with each other, whether in peace or war. It may be that, by treaties or compacts, two nations, so far as their conduct towards each other is concerned, adopt a conventional rule, but such a rule is binding, not on third powers, but on themselves alone.—*Wh. El.*, 432, 157, 169.

It was in accordance with these simple truths that the United States regulated its action during the revolt of the Spanish-American colonies. As held in Rose *vs.* Himely, (4 *Cranch*, 201,) and uniformly decided by the Supreme Court, this country, as an independent power, would not interfere between a parent country and its revolted colonies, or between the so-called *de jure* and *de facto* sovereigns of any other nation. During their military struggles with each other, whether for ascendency at one time, or respectively for subjection and independence at another, the question of right or policy between them was purely internal—intra-territorial or municipal—with which this nation could not interfere without undertaking to determine for other countries what should be their internal forms of government, and thus constituting itself the master of every people or nation struggling to establish a municipal system according to its own views of happiness or interest. In all such cases the mother country, or *de jure* sovereign, considered those in arms against the old order of things, "insurrectionists" or "rebels," whilst the resisting colonies acted on the theory of their own national independence. From the stand-point of the former it was a rebellion; from the stand-point of the latter it was a foreign war. The one was struggling to enforce obedience to rightful authority, the other to repel an attempt at invasion or subjection. Third powers could only recognize the fact that such a dispute was raging. To pronounce the contest either a rebellion or unjust invasion, would be to pass upon the very question in dispute—to assume the office, if not of

magister litium, at least of arbiter of other peoples' destinies. Wars of unjust intervention in such cases furnish the bloodiest pages in history.

During the revolutionary struggle which resulted in American independence, similar legal propositions were respectively upheld in this country and in Great Britain. The latter treated the contest as a "rebellion," and, consequently, has dated our national existence from the time when the treaty acknowledging our independence was signed; whilst the American date is from the Declaration of Independence. Claiming sovereign municipal rights over the colonies, and the laws of nations not being applicable to that contest, from the British stand-point, Parliament proceeded at an early day to pass laws to meet the supposed exigency. As the colonists, though in revolt, were not *enemies* in legal acceptation, and consequently the laws of nations, which are applicable only to independent sovereignties, did not meet the emergency, new statutes were at once adopted. Those statutes rested for their validity, not on the laws of nations, but upon British municipal sovereignty. Hence, the non-intercourse and prohibitory acts of Great Britain were not justiciable in a prize court, *as such;* they were no part of international law, but were like her colonial revenue and navigation acts. The subjects of third powers who attempted to trade with the revolted colonies, despite those municipal regulations, were, if caught within the municipal jurisdiction of Great Britain, made to answer in the penalties prescribed; just as, in times of profound peace, each nation enforces its laws upon all within its territorial jurisdiction; and just as England has always enforced her colonial and navigation acts. As to the colonists themselves, on the theory of parliamentary omnipotence, the most rigorous measures were prescribed. There was no constitutional question raised in England, although a different theory, even as to the British constitution, obtained in the colonies.

The mode of adjudicating at that time upon the captures made under the British prohibitory act, ought to shed light upon the point. Unfortunately the British admiralty decisions of that time, with few exceptions, are not accessible in St. Louis. Still, from those consulted, it seems that the precise question, *in principle*, which has been presented in these cases, was raised, discussed, and decided in the British admiralty courts after elaborate argument. The decision made in a case by Sir John Hay, we are informed by his successor on the same bench, was not law; and Sir John Hay subsequently admitted his error. As the capture under adjudication by him was an American vessel, made under peculiar circumstances, it became necessary to decide whether it was lawful *prize of war*, or merely confiscable under the prohibitory act. Much of the argument had reference to points of no importance in this country, relating solely to the mode of distributing the proceeds, whether

to the captors as *prize of war*, or to the exchequer, or as *droits* of admiralty. The opinion of Sir James Marriott, and the able arguments in the case, together with the fact that Sir John Hay subsequently retracted his adverse opinion, make the case clearly applicable on this point, viz: that such cases are not "*of prize of war*," but "of forfeiture as rebel property." Subsequent judgments conformed to that rule. Enemy property is *prize of war;* but a traitor is not an "enemy" in the legal sense.—*Bacon's Ab.*, "*Treason G.;*" *Marriott's Decisions*, 1, 76, 197, 222; *Charge to the grand jury, U. S. circuit court for Missouri, special July term*, 1861; *Opinion of Justice Swayne, U. S. circuit court for Ohio.*

If he were an "enemy," he would be the subject of another sovereignty, to which his allegiance would be due. Great Britain and her jurists were careful to avoid, at that stage of the controversy, any such implied admission of independence. Asserting her municipal sovereignty over her American subjects, she passed rigid laws for their punishment, and for the annihilation of all friendly intercourse with them, even confounding in the terms used, the innocent with the guilty. But the adjudications found in "Marriott's Decisions" softened those rigors, by placing an interpretation upon the statute which, though not in accordance with its literal reading, was held more consistent with its general scope and object.

The following is so much of that statute as is essential to a correct understanding of the point now under consideration:

"Whereas many persons in the colonies of New Hampshire, &c., have set themselves in open rebellion, in defiance to the just and legal authority of the King and Parliament of Great Britain, to which they ever have been, and of right ought to be subject, and have assembled together an armed force, engaged his Majesty's troops and attacked his forts, have usurped the powers of government and prohibited all trade and commerce with his kingdom and the other parts of his Majesty's dominions; for the more speedily and effectually suppressing such wicked and daring designs, and for preventing any aid, supply, or assistance being sent thither during the continuance of the said rebellion and treasonable commotions, be it therefore declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in the present Parliament assembled, and by the authority of the same, that all manner of trade and commerce is, and shall be, prohibited with the colonies of New Hampshire, &c., and that all ships and vessels of, or belonging to, the inhabitants of said colonies, together with their cargoes, apparel, and furniture, which shall be found trading in any port or place of the said colonies, or going to trade or coming from trading in any such ports or places, shall *become forfeited* to his Majesty as if the same were the ships and effects of *open enemies*, and shall be so adjudged, deemed and taken in all courts of admiralty, and in all other courts whatever."—31 *British Stat. at Large*, 135.

The other provisions of the act related to *proceedings* against such captured property as *lawful prize*, &c. There can be no doubt, on reading

the whole act, that it designed to subject all such property to capture *as prize*, yet it guardedly avoids the error of denominating those in arms against Great Britain "enemies," but says their property *shall become* forfeited as if belonging to open enemies. In this country the insurrectionists have been appropriately termed *quasi* enemies by Justice Nelson and Justice Swayne; and other judges have been careful to observe the distinction between enemies and traitors. They are traitors none the less in the eyes of the law because the insurrection is of large proportions, and, in certain aspects of the controversy, are lawfully treated *as if* enemies—*quasi* enemies—and even held and exchanged as prisoners of war. In that no legal inconsistency exists. During a foreign war, *American* property found trading with the enemy is condemned *as if* enemy property—it is "adherent to the enemy," and takes its character from its employment. The President of the United States in whom is vested the pardoning power, is also commander-in-chief of the army and navy, and it is his duty, also, "to cause the laws to be faithfully executed." Hence rebels taken in arms *flagrante bello*, are also traitors caught *flagrante delicto;* he may pardon them, hold them as prisoners of war, or turn them over to the courts to be tried for treason.—*Case of Luits, U. S. Circuit Court for Missouri; Case of Hicks and Cocke, U. S. Dist. for East. Dist. of Missouri.*

In the English decision to which reference is made, (*The Dickenson, Marriott's Decisions, p.* 1,) the point in the argument was, that the *forfeiture* was by force of the statute a *municipal* forfeiture and prize, and not a capture and prize *jure belli;* consequently the judgment or decree should conform, and be "*forfeited as rebel property*," or declared "*a prize of forfeiture*," instead of "*prize of war*."

The case of the *Walsingham Packet* (2 *Rob. Adm. Rep.*, 77) does not hold a contrary doctrine, but merely that a claimant in a prize suit who has forfeited his interest by a violation of a municipal statute, shall not have the *res* restored to him. The opinion of Sir William Scott indicates quite clearly that if the proceedings had been for a forfeiture under the statute, the judgment must have been one of *forfeiture*, and not of *prize of war.*

Justice Story (2 *Gall.*, 210—*The Saunders*) held that prize proceedings and informations for forfeitures under statutes cannot be blended. To the same effect are many decisions in the United States district courts and in the United States Supreme Court.—*The Dimon*, 2 *Gall.*, 306.

When the practice and pleadings in these cases come to be considered more directly in their details, the many objections to such a mixed course will be more fully and specifically stated.

In confirmation of the views already presented, reference may be made to the many decisions in Great Britain and in this country, and to the form of proceedings in admiralty for forfeitures under municipal statutes,

clearly showing that the distinction contended for has been nearly, if not quite, universally observed. Under the British and American acts prohibiting the slave trade, which (not being contrary to the laws of nations) rested for their obligatory force upon municipal sovereignty—also, under the several non-intercourse, and embargo, and non-importation statutes, &c., proceedings were instituted by libels of information or informations (as the cases might require) on the *instance* side of the court. Indeed, in some of those cases, it was expressly held, that though the forms of proceedings as regulated by the statute were in the nature of prize, and the captors were entitled to prize money, yet the cases were not prize within the meaning of even the general prize acts of the United States; they were not prizes of *war*, because not captures *jure belli*.

The Recovery, 6 Rob. Adm., 348.
The Hope, 2 Gall., 48.
The Saunders, 2 Gall., 210.
The Eliza, 2 Gall., 4.
The Dimon, 2 Gall., 306.
United States *vs.* The Hunter, Pet. C. C. Rep., 10.
Clark *vs.* United States, 2 Wash. C. C., 522.
United States *vs.* The Nancy, 3 *ib.*, 281.
The Huntress, Davies, 83, (note.)
Jecker *vs.* Montgomery, 13 How., 498.
Hooper *vs.* 51 Casks, &c., Davies, 371.
Gelston *vs.* Hoyt, 3 Wh., 246.
United States *vs.* 1960 Bags, &c., 8 Cranch, 405.
The King *vs.* Whittaker, 1 Hagg., 145.
The Adelaide, 2 Hagg., 230.
The Woodbridge, 1 Hagg., 63.
The Union, 1 Hagg., 32.
The Diana, 1 Dods., 95.
Little *vs.* Bareme, 2 Cranch, 170.
Schooner Paulina's Cargo, 7 Cranch, 52.
Murray *vs.* Schooner Charming Betsey, 2 *ib.*, 64.
Schooner Hoppet *vs.* United States, 7 *ib.*, 389.
Brig Penobscot *vs.* United States, 7 *ib.*, 356.
The Adventure, 8 *ib.*, 221.
Ship Richmond, 9 Cranch, 102.
Cargo of Ship Fanny, 9 Cranch, 181.
The Octavia, 1 Wheaton, 20.
The Edward, 1 *ib.*, 261.
The Pitt, 8 Wh., 371.
The Frances & Eliza, 8 *ib.*, 398.
Sloop Active, 7 Cranch, 100.

The William King, 2 Wh., 148.
Brig Eliza, 7 Cranch, 113.
Josefa Segunda, 5 Wh., 354.
The New York, 3 Wh., 59.
The Yacht Wanderer, Sprague, 515.
The Glamorgan, *ib.*, 273.
Schooner Sally and Cargo, 1 Gall., 58.
The Brig Ann, 1 Gall., 62.
Sloop Nancy, 1 *ib.*, 67.
Brig Short Staple, 1 *ib.*, 106.
Schooner Friendship, 1 *ib.*, 111.
Sloop Falmouth, 1 *ib.*, 130.
Brig Wasp, 1 *ib.*, 140.
Ship Argo, 1 *ib.*, 150.
10 Hogsheads of Rum, 1 *ib.*, 188.
Schooner Mary, 1 *ib.*, 206.
Brig Rose, 1 *ib.*, 211.
The Mars, 1 *ib.*, 237.
Schooner Boston, 1 *ib.*, 239.
Schooner Orono, 1 *ib.*, 138.
Schooner Rapid, 1 *ib.*, 295.
Schooner Sally, 1 *ib.*, 401.
Brig James Wells, 7 Cranch, 22.
The Julia, 1 Gall., 43.
Schooner Friendship, 1 *ib.*, 177.
The William & Grace, Marriott's Dec., 76.
The Rebeccah, *ib.*, 197.
The Renard, *ib.*, 222.
The Porpoise, 2 Curtis, 315.

An analysis of these cases will show, that where forfeiture is by force of a municipal statute instead of the law of nations, although the words "capture and prize" are used in the act, the proceedings are on the instance side of the court. Judge Sprague, in the case of "Glamorgan," presents very clear views on the point. (Also, 2 *Curtis*, 315.)

The distinction with respect to *prize* and instance jurisdictions is also insisted upon where libels have been filed at the same time on both sides of the court. Thus in "*The Eliza*," where the claim was rejected, (the vessel having been libelled on the instance side,) it was ordered to be held for prize proceedings. And where a libel of information was drawn under one section, and at the hearing it appeared the forfeiture was under another section, it was held bad. (*United States* vs. *The Hunter*, *Pet. C. C. Rep.*, 10.) If the trial is on the prize side, and both captors and claimants are defeated, the United States may interpose a claim for

municipal forfeiture, (*The Brig Gefla*, 1 *Mason*, 88.) In the case of the "Schooner Rapid," (1 *Gall.*, 314,) Justice Story alluded to the irregularity in practice, in making a seizure for a municipal forfeiture, pending prize proceedings. He stated the proper course to be, to interpose a claim in the prize case; that no principle authorized the other practice. It is unquestionably correct, according to both the English and American practice, for the court which first obtains jurisdiction to retain it until final adjudication. As the decree and sale give a valid title against all the world, whether made on the prize or instance side, it becomes necessary, in order to avoid endless difficulty, that all claimants and persons who can intervene *pro interesse suo* should do so in the original suit. This follows as a necessity, also, in those cases where municipal forfeitures are swallowed up in the more general operations of the laws of war, (*The Sally*, 8 *Cranch*, 352;) and, therefore, if prize condemnation ensued prior to the adjudication on the instance side, the lien for forfeiture and all rights under it would be practically lost. So, if suit is first instituted on the instance side, the prize captors can come in, and as claimants have the conflicting and relative demands of the contesting parties heard. If they succeed in defeating the instance suit, it may be a question whether the court would not then require the captors to file a libel on the prize side, and retain custody of the property to await the result, or whether it would, as an incident to the instance suit, proceed to final adjudication. The intimations by courts are in favor of the former practice, and principle leads to the same conclusion. On the instance side the court would so far hear the demand of the captors as to determine (as in all other cases of claimants) that the property ought to be restored to them. When so restored, prize law would demand the immediate institution of the proper proceedings. Such conflicts can hardly arise, however, if the law be faithfully observed, for the prize-right of captors depends, as a general rule, on possession obtained and held.—2 *Gall.*, 42; 8 *Cranch*, 189, 368; 7 *Wh.*, 355.

In this no reference is made to recaptures, for they depend upon other considerations. If the captors send the vessels and property in, as required, with a prize crew, and turn them over to prize commissioners, there can be no interval in which the property would be subject to an instance seizure so that the instance court could acquire jurisdiction; for its jurisdiction generally depends on seizure. So, on the other hand, if the property was in the custody of the instance court, how could it become subject to prize capture; or, if previously captured, how could the possession of the captors, prize crew, and commissioners have been lost, without abandonment or gross neglect on their part?

These suggestions serve to mark the ineffaceable distinction between prize proceedings *jure belli* on the one side, and civil and maritime causes

on the other. Whilst it seems clear that, in England, the distinction has never been ignored, it is also obvious that in the United States it has seldom, if ever, been disregarded. The distinction does not spring from the different modes of commissioning the judges in the two countries, but from the subject-matter, and the inherent principles of law on which it rests. In Great Britain the instance judge, by virtue of his general commission to preside in admiralty, receives no authority to hear and dispose of prize causes. He hears merely what Lord Mansfield denominates "causes, *civil* and marine." As all captures from the enemy belong to the sovereign, he decides either for himself, or deputes another to decide for him, whether the capture was lawful prize. Hence the prize commission sent at the outbreak of each war to the admiralty judge. In the United States, however, where the municipal constitution is based on a different theory—where the sovereignty of the country is not in an hereditary monarch, but in the people, and where delegated powers from the sovereign people are by virtue, not of temporary commissions, but of organic law—the federal judiciary is clothed with the sole right to decide on questions of prize and "all cases of admiralty and maritime jurisdiction." It needs no special commission from the Executive.

The United States Supreme Court (*Jecker* vs. *Montgomery*, 13 *How.*, 515) held that "under the Constitution of the United States the judicial power of the General Government is vested in one Supreme Court, and in such inferior courts as Congress shall from time to time ordain and establish. Every court of the United States, therefore, must derive its jurisdiction and judicial authority from the Constitution or the laws of the United States; and neither the President nor any military officer can establish a court in a conquered country and authorize it to decide upon the rights of the United States, or of individuals in prize cases, nor to administer the law of nations." And the same rule was decided to prevail with respect to courts within the territorial jurisdiction of the United States.—*United States* vs. *Ferreira*, 13 *How.*, 40.

But the jurisdiction of the United States admiralty courts, as instance courts, is more extensive than in England. In the latter country the conflict between the common-law and the admiralty courts resulted in excluding the latter, in instance suits, from proceeding on matters occurring *infra corpus comitatus;* but on the prize side, as was contended in *Lindo* vs. *Rodney*, their jurisdiction was not thus restricted. Whatever doubt and difficulty as to instance jurisdiction may have existed in Great Britain (2 *Browne, C. L.*, 29, 208) cannot arise in this country now, (*The Huntress, Davies*, 83, *Note.*) After a long forensic contest, it was settled that the grant in the United States Constitution was broader than the restricted powers known to English courts; that the words "all cases of admiralty and maritime jurisdiction" were used, in part, to exclude

so narrow a conclusion. The words "admiralty" and "maritime" are not synonymous. They embrace all captures in maritime war as prize, and all civil causes of a maritime nature. Under that constitutional grant the judiciary act was passed, vesting in the district courts the jurisdiction already mentioned.

The Huntress, Davies, 83, Note.
The Rapid, 1 Gall., 295.
Schooner Sally, 1 Gall., 401.
The Sandwich, 1 Pet. Adm., 233.
The Jerusalem, 2 Gall., 398.
3 Dall., 397, 301; 2 Cranch, 406; 4 Cranch, 452.
Keene *vs.* United States, 5 Cranch, 304.
Whelan *vs.* United States, 7 Cranch, 112.
The Genessee Chief, 12 Howard, 443.
Waring *vs.* Clark, 5 Howard, 441.
12 Howard, 446; 1 Wheaton, 238; 4 Wheaton, 298; 5 Wheaton, 385.

The United States district courts, then, have jurisdiction of all maritime causes, whether instance or prize; and of all seizures under the United States revenue or other laws, whether made on the high seas, or on rivers navigable for vessels of ten tons burthen, or on land. They are at one and the same time prize courts, instance courts, and common-law or exchequer courts. They administer the laws of nations as prize courts, and sometimes general maritime or municipal law as instance courts; and also, as instance or exchequer courts, the municipal statutes. The extent of their jurisdiction, as thus conferred, has been the subject of many adjudications; yet no one has ever contended that when the jurisdiction of the *court* was clear and undisputed, it could proceed indiscriminately in all cases, and confound prize, instance, and common-law causes. Each class is governed by its own rules; a disregard of which would work not only confusion, but inexcusable violations of legal rights. Nothing but injustice could flow from such an arbitrary and reckless disregard of established barriers. "*Optima regula est, qua nulla est verior et firmior in jure, neminem oportet esse sapientiorem legibus.*"—7 *Coke*, 1.

The extent of the prize jurisdiction in this country, so far as vested in the United States district courts, has been already referred to in connection with the intimations of Justice Story, in the case of "*The Emulous.*" The remarks of the United States Supreme Court in the case of *Brown* vs. *The United States*, (8 *Cranch*, 110,) settle nothing as to this point. The property in that case was treated in the circuit court as *water-borne*—in "a creek or dock where the tide ebbs and flows." In the Supreme Court the point was not noticed, because not necessary to the decision, in the view there taken of the case. The direct question was before the supreme court of Connecticut in 1816, (*Slocum* vs. *Wheeler*, 1 *Conn.*, 429.)

That court held that a seizure on land, except as a naval capture within the rules previously stated, could not be *prize of war*, and consequently the decree of the United States district court, on its prize side, with respect to that land capture, was *coram non judice* and void. The opinions pronounced in that case notice carefully the distinction between the common-law and admiralty sides of the district court, and admit that it is competent, within the rule established in Brown *vs.* The United States, to confer upon United States courts jurisdiction of land captures; but, after an elaborate examination of authorities, it was held that no such jurisdiction, at that time, had been vested. That case is important with respect to the construction put upon the judiciary act, whose terms include "all seizures on land," &c., made under the laws of the United States. It is evident that those seizures, referred to in the judiciary act, were construed to mean municipal seizures. To the same effect are several of the cases already cited. The United States Constitution, however, gives jurisdiction "in *all* controversies where the United States are a party," and the suggestion that none but personal actions are included within that provision is against both the language used and all adjudications under it. In all informations and libels of information to enforce forfeitures, &c., under revenue, or prohibitory, or any other municipal statutes, where the action is brought in the name of the United States, the United States are a party; the controversy is necessarily one instituted and prosecuted or pursued by the United States, it matters not what mode of procedure is adopted. Congress can vest such jurisdiction in the district courts, because the grant of power is broad enough for the purpose.

In the remarks already made on the subject of *booty*, it was intimated that such land captures were not cognizable in the British admiralty courts as such.—*Comyn's Dig. Admiralty, F.*, 1.

Their jurisdiction as prize tribunals was confined to naval operations, or such as were carried on conjointly with a land force. After the modern British statutes were passed, it was competent to refer booty cases to those courts, just as it may be competent for Congress to vest United States district or circuit courts with such jurisdiction. Hence, the cases mentioned by *Phillimore*, and those found in British Reports, (*Alexander* vs. *Duke of Wellington*, 2 *Rus. & M.*, 35; *Army of Deccan*, 2 *Knapp*, 152; *French Guiana*, 2 *Dods.*, 151; *Tarragona*, 2 *Dods.*, 487; *Genoa*, 2 *Dods.*, 446, &c., &c.,) do not throw any light upon the point under consideration.

It is necessary to mark, however, the distinction existing between the international and the common-law rules on this subject. In *Goss* vs. *Withers*, (2 *Burr*, 685,) and in *Cook* vs. *Howard*, (13 *Johnson's Reports*, 276,) the ancient and modern authorities are fully considered. Those cases refer to recaptures on land and the rights supposed to depend

thereon. The conclusion reached was, that a capture on land cannot be considered as vesting any right in the captor until the *spes recuperandi* is lost; which cannot be the fact until the battle is ended, or twenty-four hours' possession has followed, or the property been brought *infra præsidia;* that while in *maritime* captures the title does not pass, in modern times, before judicial condemnation, no such adjudication is deemed necessary in *land* captures; that the common law formerly may have given property taken on land to the captor, but that booty is now held to belong to the sovereign, &c. The American rules and articles of war have adopted the same principle, and seem also to recognize the distinction between booty, and plunder or pillage:

"ART. 58. All *public* stores taken in the enemy's camp, towns, forts, or magazines, whether of artillery, ammunition, clothing, forage, or provisions, shall be secured for the service of the United States; for the neglect of which the commanding officer is to be answerable."

Under that rule, cases of land capture would not be likely to come before civil courts for adjudication. The species of property mentioned (if taken in such places) falls within the definition of *booty.* It is public, and not private property, that may be captured; and in vain, it is apprehended, will search be made through American statutes, decisions, or diplomacy, for any permission to non-commissioned or commissioned persons to indulge in indiscriminate plunder or pillage, especially from peaceful inhabitants of an enemy country, or from non-combatants. No right, as captor, vests in any person. Military commanders must secure all *public* stores for the use of the United States. If, incidentally or otherwise, a question of capture or recapture on land should come before an American court, it would have to be decided according to the foregoing rules. The policy underlying such statutes may have primary reference to military discipline, but, nevertheless, they indicate the American view of what the laws of modern war demand. That view was expressed, soon after the adoption of the United States Constitution, in the case of *Talbot* vs. *Janson,* (3 *Dall.,* 133.) And all American legislation, diplomacy, and decisions have, in the main, corresponded with Justice Iredell's opinion: "War can alone be entered into by national authority; it is instituted for national purposes, and directed to national objects; and each individual on both sides is engaged in it as a member of the society to which he belongs, not from motives of personal malignity and ill-will. He is not to fly like a tiger upon his prey, the moment he sees an individual of his enemy before him. Such savage notions, I believe, obtained formerly. Thank God! more rational ones have succeeded." (Also, *Turnbull* vs. *Ross,* 1 *Bay,* 20:) War is to be waged not from selfish ends, but to secure stable peace on just and equitable bases. It is open and armed opposition, not personal hate, malice, or malignity.

It is not for vengeance, but may be for redress. It is not for the sake of war, but to conquer just and certain peace. "*Hostis non inimicus est.*"

The principle upon which the British prohibitory act was based, has undergone frequent discussion in both British and American courts, and been argued from the same standpoint, in cases where the property of a *subject* was taken trading with an enemy, and the question was, whether it was lawful "prize of war." All property belonging to citizens of the adverse belligerent, or to persons domiciled in his country, if found afloat on the high seas, is unquestionably lawful prize, (*The Venus*, 8 *Cranch;*) but on what theory, *jure belli*, is the property of a citizen at home, and there domiciled, so considered? Its owner, according to the arguments urged, may have violated the non-intercourse or prohibitory acts of his own country, or may have committed treason, yet cognizance of those offences belongs solely to the municipal administration of his own sovereign. So, if seizures were made within the territorial jurisdiction of the latter, why are they not exclusively of municipal jurisdiction? The answer has been, that the guilty subject in a foreign war has violated the laws of war, which forbid all intercourse between the inhabitants of hostile nations, while at the same time he may have been guilty of a breach of allegiance. Prize courts, as such, take cognizance of the former offence, and condemn the property so used for the enemy's benefit, because it is *quasi* enemy's property, or, in the language of the courts, is taken while "adherent to the enemy." The municipal offence may be punished by his sovereign according to the municipal code; by fines, forfeitures, penalties, imprisonment, or otherwise, as that code dictates. As a traitor the person may be tried and hung for "giving aid and comfort to the enemy," if the municipal law so requires; or he may be subject to a fine or to heavy penalties, &c., as under the laws in force during the war of 1812. The jurisdictions, however, were different.

The Nelly, 1 Rob., 219.
The Indian Chief, 5 Rob., 19.
Bell *vs.* Gibson, 1 Bos. & Pul., 345.
Gist *vs.* Mason, 1 T. R., 85.
Tintando *vs.* Rogers, 3 Bos. & Pul., 197, 199.
Potts *vs.* Bell, 8 T. R., 549.
1 Rob., 165; 4 Rob., 78; 5 Rob., 224, 265.
The Julia, &c., 1 Gall., 594; affirmed in Julia, &c., 8 Cranch, 181.
The Joseph, 1 Gall., 545.
The Tulip, 3 Wash. C. C., 181.
The Hoop, 1 Rob., 196.
The Rapid, 8 Cranch, 155, 421.
The Rapid, &c., 1 Gall., 295, 303, 545.
Jecker *vs.* Montgomery, 13 How., 498.

Jecker *vs.* Montgomery, 18 How., 114.
The Rugen, 1 Wheat., 62.
The Joseph, 1 Gall., 545.
The Joseph, 8 Cranch, 451.
Liverpool Packet, 1 Gall., 543.
The Alexander, 8 Cranch, 169.
The Sally, 8 Cranch, 382.
The Sally, 1 Gall., 401.
The Recovery, 6 Rob., 341.

In the consideration of these cases, thus far, it has been deemed advisable to give at greater length than was necessary, at each particular stage of the inquiry, the general principles which must govern, in order to avoid repetition. Many of those principles will be briefly invoked in the applications to be hereafter made.

As the law stood before the commencement of the present rebellion, there was no jurisdiction *in rem* in United States district courts, of seizures on land, except under special statutes. As prize courts, they had no such authority, unless made by naval forces or commissioned vessels, under the circumstances and within the limits mentioned. Have the recent statutes given them full jurisdiction, not *jure belli*, (for municipal statutes have no such force under the laws of nations,) but *municipally?* It is well settled that "An act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains," so far, at least, as belligerent and neutral rights, and commerce, are to be affected thereby. (*The Charming Betsy*, 2 *Cranch*, 64.) But the cases before this court now, have nothing to do with neutral rights, or with public enemies, technically so called. As has been held by this court in several cases during the existing rebellion, the propositions, so far as either rebels or loyal citizens are concerned, are of constitutional and statutory or municipal, and not of international law. The rebels are subjects *de jure*, bound by the Constitution and the laws of the United States. Their insurrection has not absolved them from their allegiance. They have embarked in giant enterprises of a military and treasonable nature to break that tie; but they can never be treated by the judiciary as having accomplished that object so long as the political department adheres to its duty. They have not in American courts belligerent rights and immunities under the law of nations, for they do not belong to the family of nations. No power has yet recognized them as a member of that family; and if it had, the recognition would be obligatory on no other than the recognizing power, and least of all upon the United States government. That foreign power and its subjects would be estopped by that recognition, or by a recognition of a state of belligerency, from disputing in our courts that captures of foreign vessels and property are to

be governed by the rules of maritime warfare. The act of the foreign sovereign declaring neutrality would fix the status of all his subjects. The governmental organization of the rebels is, in a legal point of view, in American courts, only an insurrectionary organization. Every provision of the United States Constitution, treaties, and statutes is still obligatory upon them. When the courts are so far obstructed in the administration of justice as to be unable to enforce ordinary process in the usual manner, then civil war exists; or, as the United States Constitution and laws define the condition, a *state of insurrection*. So all jurists and publicists have held, and so the acts of 1795 and 1861 and the adjudications upon them maintain.

Vattel, in his chapter on civil war, presents views which, however much to be commended in some particulars on the grounds of policy and humanity, are wholly indefensible in other respects, and as legal propositions. If they were universally true, *every* rebellion would necessarily lead to a temporary suspension or abdication of all rightful authority or municipal sovereignty. However wise his suggestions may be concerning such civil wars in Europe as are inaugurated for merely dynastic changes, where contending aspirants are struggling for a throne, they certainly can have no application to revolts against the fundamental organization of society, where the political or social opinions on which an insurrection is based divide the people of the same districts, towns, and even households. It is impossible, under such circumstances, however it may be in revolts by defined geographical boundaries, to treat the revolting party or faction *quoad hoc* as an independent nation, and to apply all the rules of international warfare. There is no possible *mode* of working a complete separation of the antagonists into distinct organizations, so that they may hold dominion over different portions or districts of country, and be thus subject exclusively, for the time being, to the commands of their respective leaders. If the ordinary laws of war should be applied to them when the opposing partisans are commingled indiscriminately in every neighborhood, his theory would work greater, instead of less, calamity to the whole people. The object for which he contends would be defeated by the policy he urges. But the wisdom of such a policy, however, is for the sovereign to determine in each case. The question is not an international one, and does not fall under the law of nations.—3 *Phillimore*, 503; 7 *How.*, 1.

The modes of proceeding in such cases must be determined by the internal constitution of the country. In Great Britain, many statutes were, from time to time, adopted, in order to mitigate the severities of the old municipal law in such cases, even going to the extent of excusing obedience to a *de facto et non de jure* sovereign, under particular circumstances. (4 *Black*, 77; *Forster's Crown Law*, 399; 3 *Inst.*, 7.) To the same gene-

ral effect are the American decisions concerning portions of country temporarily under hostile dominion, and the inhabitants thereof.—2 *Gall.*, 235, 501; 4 *Wheaton*, 246, 254; 9 *Cranch*, 191; 3 *Pet.*, 99, 242; 9 *How.*, 603, 615.

The United States Constitution expressly refers to and provides for *different kinds* of war. In foreign wars the laws of nations govern; such has been the universal ruling by American courts; and the principles already stated leave no other logical conclusion. Blackstone (*vol.* 4, *p.* 66) states the rule and the reason thereof very succinctly: "The law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world. * * This general law is founded upon this principle, that different nations ought, in time of peace, to do one another all the good they can; and, in time of war, as little harm as possible without prejudice to their own real interests. And as none of these States will allow a superiority in the other, therefore neither can dictate or prescribe the rules of this law to the rest; but such rules must necessarily result from those principles of natural justice in which all the learned of every nation agree, or they depend upon mutual compacts or treaties between the respective communities; in the construction of which there is also no judge to resort to, but the law of nature and reason being the only one in which all the contracting parties are equally conversant, and to which they are equally subject. In arbitrary States this law, wherever it contradicts or is not provided for by the municipal law of the country, is enforced by the royal power; but since in England no royal power can introduce a new law, or suspend the execution of the old, therefore the law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted, in its full extent by the common law, and *is held to be a part of the law of the land.* And those acts of Parliament which have, from time to time, been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introductive of any new rule, but merely as declaratory of the old fundamental constitutions of the kingdom; *without which it must cease to be a part of the civilized world.*"

To the same effect in this country are all American decisions, and the language of the United States Constitution. Congress has "power to define and punish offences against the law of nations," "to declare *war*," &c., but "the rules of warfare established among civilized nations cannot be lawfully transcended" in dealing with foreign powers. (Brown *vs.* The United States, 8 *Cranch*, 153.) And the grants of power to the judicial department directly recognize the same principles, and have always been exercised in accordance therewith. But Congress has also "power to provide for calling forth the militia to execute the laws of the Union,

suppress *insurrections*, and repel *invasions*," and "treason" is defined to "consist only in levying war against the United States; or in adhering to their enemies, giving them aid and comfort." In those clauses, internal or domestic war is referred to, as well as foreign wars. Resistance to the execution of the laws, insurrections, and "levying war," which may call for military action, are as distinctly provided against, when made by American subjects, as are invasions or foreign wars. Treason may consist either in active participation against the United States in such a domestic conflict, or in giving aid and comfort to the foreign foe during foreign wars; that is, if the offender owes either qualified or absolute allegiance to the United States. The first class of treasons has been judicially settled to include all assembling in an armed and threatening manner for the general purpose of preventing any law from being enforced, if done with the view of overthrowing any law by force or violence. It is obvious that such levying of *war* may be confined to a small district, and to comparatively a small number of persons; yet it is *war* within the meaning of the Constitution. If, then, Vattel's suggestions were to hold good universally, such a comparatively insignificant outbreak might involve the necessity of proceeding according to all the formal rules of civilized warfare in the various measures taken to suppress even such a movement. Indeed, the law of treason, which is necessarily municipal—for it involves merely the breaking of the tie between the sovereign and his subject—would become a nullity. If the traitor must be treated only as an enemy not governed by the municipal but by the international code, he could be held only as a prisoner of war, but not as a traitor, nor could he be punished for his treason. To such strange anomalies, subversive of all the ties and duties of allegiance, and of all power to enforce them, does Vattel's theory lead, if accepted in its whole length and breadth. And, on the other hand, if every war recognized by the Constitution, instantly, and of its own force, clothes any one or more departments of the Government with absolute power, or powers unknown to the Constitution, or prohibited by it, then the other strange anomaly must exist, viz: the instant overthrow of the Constitution as an organic and supreme law by any act of treason, however insignificant in proportions, which may chance to be committed in any part of the country by any number of citizens, however inconsiderable. In other words, the resistance to be overcome leaves no constitutional power to be exercised against it; for if the Constitution ceases to be obligatory because it is assailed, then it expires whenever assailed, and no one has any constitutional authority to defend the annihilated source of authority.

Such, fortunately, is neither logic nor law. In the municipal administration of affairs, during rebellions or foreign wars, the Constitution pre-

serves all its vitality. In foreign contests, the United States government may do whatever the law of nations justifies.

In accordance with the views expressed by the United States Supreme Court and several other United States courts, and by the plain provisions of the Constitution itself, it is as competent for Congress to vest the judiciary with jurisdiction of land captures as of sea prizes. If, hitherto, it has not been done, it may have been for the reason that no occasion had arisen to render such legislation advisable. To the present hour, it may be safely asserted that no such jurisdiction, *jure belli*, has been given. But, because such jurisdiction, *jure belli*, has not been vested in the United States judicial tribunals, it by no means follows that jurisdiction has not been given over captured property used in aiding the rebellion; that, *municipally*, those courts have not been clothed with power to enforce forfeitures against property employed in violation of prohibitory statutes. Under the several embargo, non-intercourse, and slave-trade acts, the United States courts were authorized to proceed *in rem* against the *offending property*, and also personally against the *offending parties*. Those proceedings were by force of municipal sovereignty, which extends over, not only the territorial limits of the country, but over the vessels and crews belonging to the nation, on the high seas. The offences not being against the law of nations, were not cognizable, except under municipal statutes. Those statutes having given the necessary jurisdiction, the cases were adjudicated in the manner prescribed. If they fell on the admiralty and maritime side of the court, as its limits of authority have been judicially determined, they were heard in admiralty, otherwise as common-law or exchequer suits.—5 *Wh.*, 338; 8 *Cranch*, 155, 421; 5 *Cranch*, 304; 1 *Gall.*, 545, 295; 3 *Dall.*, 297; 2 *Cranch*, 406; 4 *Cranch*, 443; 3 *Dall.*, 6; *Wheaton's Elements*, 432, 157, 159, 405; 9 *Wh.*, 362; 10 *Wh.*, 66; 2 *Cranch*, 187; 4 *Cranch*, 241; 2 *Curtis*, 315; *Act of July* 6, 1812.

Some of them, as, for instance, the slave-trade acts, provide for the seizure or capture of both the offending persons and property, by armed vessels of the United States, and grant distributive shares of the property condemned, *as* in case of prize of war. The captures and condemnations are not, however, of prizes, *jure belli*, but municipal forfeitures. Such property is the "lawful subject of capture wherever found," by an American vessel, and if the acts had said "of prize" also, the terms employed would have been the same as those in the act of August 6, 1861. Because the offending persons were also punishable by indictment, the United States courts were not ousted of jurisdiction in suits for the penalties and forfeitures prescribed. By those acts, vessels which are being fitted out for that trade may be seized in port and forfeited, and the persons engaged in fitting them out punished by fine and imprisonment. The proceedings *in rem* for the forfeiture of the vessel, and also the prosecution

of the guilty persons, may be instituted at the same time and pursued separately to final judgment and execution. The proceedings would be on different sides of the court, but not incompatible with, nor dependent on, each other.

So the statute of August 6, 1861, which declares certain offending property "to be lawful subject of capture and prize wherever found, and that it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned," makes no strange or anomalous provisions. "Such prizes and captures shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same may be seized, or into which they may be taken and proceedings first instituted." The meaning is not obscure. If the seizure be on land, the trial must be by jury as in revenue cases on land; if on water, and within admiralty jurisdiction, then on the admiralty side of the courts. The seizure being *under* a law of the United States, would fall within the terms of the judiciary act giving jurisdiction to the United States district courts. According to the principles stated, libels of information, or informations framed under the act, and conforming to the rules of pleading governing cases of municipal forfeiture, would be the proper mode of commencing such suits. That mode was adopted in the first of the two cases now under consideration. But objection is made to the validity of those sections of the act of July 17, 1862, under which one of the counts of the libel of information is drafted. This leads to an important inquiry. The question is one not of international but of constitutional law.

The principle announced in Rose *vs.* Himley (4 *Cranch*, 241) and repeated in the following as well as other cases, viz: that during a war belligerent rights are *superadded* to those of the municipal sovereignty—a principle invoked by counsel and unquestionably correct, when properly understood—it is conceived has no application to the subject before the court. 6 *Cranch*, 281; 7 *Wh.*, 283; 3 *Wh.*, 246, 610; 4 *Wh.*, 52, 497; 14 *How.*, 38, 46; 6 *Wh.*, 191; 9 *How.*, 603–13. The same principle thus held correct in this country was announced in the *Immanuel*, 2 *Rob.*, 186; *The Manilla*, 1 *Edw. Ad.*, 1. Also in 3 *Hagg.*, 1; 16 *How.*, 164. It logically follows, from the doctrines already discussed, that every sovereign holds, so to speak, a two-fold relation to others. In his municipal or intra-territorial actions, he has the powers granted him or consistent with the internal or domestic constitution of his country, and no more. His subjects have a right to appeal to its restraining influence in all cases of its supposed violation. It is the bond of union between them and him, defining his rights and duties, and theirs also. Whether he is an absolute or limited sovereign, or merely the chief executive of a republic, is an internal or constitutional question. If other nations undertook to decide be-

tween him and his subjects, or the citizens of his country, whenever a dispute arose between them, either as to the true interpretation of their organic law, or as to their respective rights to alter or abolish the same, the country whose internal affairs were thus interfered with would cease to enjoy that equality and independence to which, under international law, as one of the family of nations, it is justly entitled. With that internal dispute other nations, as has been shown, have no right to interfere; it is beyond their cognizance; it is a municipal or household controversy into which others have no warrant to intrude. Hence they must remain strictly impartial and neutral; for if they decide it to be either rebellion or a just revolution, and thus throw into the scale the weight of their authority, they assume to dictate and adjust the internal conduct, disputes, and organization of other countries. The modern practice conforms not only to that rule, but to the example always set by the United States. The *fact* of the internal controversy may be recognized; and when it assumes belligerent proportions, third powers may treat it as a war; abstaining, however, from pronouncing on its justice or injustice, or from lending aid to either of the contending parties. The sovereign of that country, in the conduct of his foreign affairs, has, in the light of international law, as full belligerent powers and rights as any other sovereign. Every sovereign has, for purposes of municipal administration, municipal sovereignty, more or less limited by the domestic constitution of his country; and, at the same time, for purposes of foreign or international intercourse, as full and complete rights, peaceful and belligerent, as the most absolute sovereign in the family of nations. It may be that different portions of internal sovereignty are vested in different persons, or that the powers of municipal and extra-territorial administration are lodged in different hands. But such questions of domestic organization do not affect the principle. Under the American theory the United States Government is just what its Constitution declares it to be; it has no other being or existence whatever. It is vested by the people with certain and definite powers, and those are distributed among coördinate departments. It is *supreme*, within its prescribed sphere, over the people of the whole land; beyond its sphere it is a legal non-entity—destitute of all power and rightful authority or legal existence. It cannot transcend the powers with which it is clothed, or violate its organic law, which is just as much the law of its life as to the human being are the vital laws of his organism. The internal arrangements of sovereign powers are purely municipal questions. It is enough for foreign nations to know concerning them, that the United States Government is vested with full war power, and with the exclusive management of all foreign or extra-territorial affairs. Hence, as to all foreign nations, it may exercise the fullest rights of belligerency when

occasion requires. Those rights are not, accurately speaking, *superadded* by war, for they existed before. War only calls them into potential activity. In peace they lie unused or dormant.

In deciding, therefore, questions of internal or constitutional law, no aid can be had from the law of nations, except in interpreting terms employed. No constitutional *power* is derived from that source; nor does the law of nations define, nor can it, what the municipal organization of each or any nation shall be. By the Constitution of the United States Congress has power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." As has been judicially settled, and as the foregoing principles suggest, that power in foreign wars is limited only by the rules of modern civilized warfare. *Justice Story's Opinion in Brown* vs. *United States*, 8 *Cranch*, 110; *The Venus*, 8 *Cranch*, 253.

It has power also to define and punish offences against the law of nations; but in its exercise of that power it can enforce its own statutes only upon American citizens on the high seas or extra-territorially, and upon all persons intra-territorially. It has power also to provide for calling forth the militia to execute the laws of the Union, "*suppress insurrections*, and repel invasions," "to raise and support armies, and provide and maintain a navy." No one has contended that under those or any other granted powers, the United States Government derives authority, whilst repelling an *invasion*, to disregard all the prohibitions contained in the Constitution—that, by force of the necessity springing from such invasion, it is at liberty to transcend all limits upon its intra-territorial or municipal control over the lives, liberties, and property of its own citizens. The Constitution, as has been decided, does not extend over foreign conquests, as such, *eo instante*, (9 *How.*, 603;) and therefore the laws of war alone govern the military operations of the Government the moment our armies pass beyond our territorial jurisdiction. So long as the army is within that jurisdiction it is amenable to all constitutional requirements, and each soldier and officer is bound to obey the civil as well as military laws. It is not necessary, in searching for a general principle, to note every exceptional case that may arise—such as martial law, &c.—but merely to ascertain whether, because, extra-territorially, the laws of nations govern, they must therefore be the only obligatory rules of action, intra-territorially, despite the internal constitution and laws. To pursue this inquiry in all its length and breadth would require a treatise. It is sufficient for the present purpose to say, that intra-territorially the Constitution is *supreme* over all statutes, compacts, ordinances, orders, or decrees. It is not only the *supreme* law, but that which the people, in their sovereign capacity, have proclaimed their safety requires.

"The safety of the people, which is the supreme law," is involved in

the maintenance of that supreme law—the United States Constitution; whatever is in conflict with it is void, assailing, in the highest sense known to reason or law, "the safety of the people," for whose happiness that Government was instituted and Constitution ordained. As the people have thus decided what is the supreme law which their safety demands, there can be no other law, in a human sense, higher or more obligatory. Full constitutional powers exist to carry on foreign wars according to the laws of nations. That is its sole limit. Among the family of nations this country is the equal of every other, and knows no superior except the laws common to the whole family. Whilst the Government is confined within constitutional limits, in all its dealings with its own citizens, it is not so confined as to be cognizable by foreign nations in its extra-territorial operations with others.

An insurrection presupposes that the laws of the country cannot be enforced through ordinary tribunals by ordinary process. Hence the necessity of resorting to force, to overcome the obstacles and resistance interposed. The object in view is the removal of those obstacles, the overcoming of the resistance, and the reinstatement of the civil tribunals in their wonted vigor. Obedience to the Constitution and laws must be exacted from each and all. "*Legum, idcirco, omnes servi sumus ut liberi esse possimus.*" The use of military force in wars is not, as was justly said in the argument, to punish or to avenge. The punishment of the civil and criminal offences committed by the insurrectionists is the office of civil authority; the military forces have military jurisdiction alone. They treat prisoners captured, merely as "prisoners of war," and not as "traitors." They act with reference to property as military movements at the time may urgently require; but theirs is not the constitutional function to try offences, and enforce penalties and forfeitures, as such. Hence the distinction must always be observed between military power acting on the one hand in a district of country conquered from a *foreign* foe, where it has no law, but the law of nations, common to it and the subjects of its foreign enemy, who for the time being are under the new and military dominion, and military power on the other hand *at home*, where the obligatory laws, and the only ones common to all, are the Constitution and municipal codes. Therefore, military operations against an insurrection should be conducted according to the rules of modern civilized warfare, and also within constitutional limitations. It is a narrow view of the Constitution to hold that it is unequal to the work of self-preservation against all forms of opposition—that its powers are not, when rightfully construed and applied, equal to every emergency, even to that in which it has been involved by this criminal rebellion. If it is not, whence does any one derive legitimate authority beyond or against its *supreme* obligatory force? Who has any legitimate authority *beyond*

its sanction? It may, therefore, be correctly stated, as urged in argument, that all military operations for the "suppression of insurrection," should be limited both by the rules of modern civilized warfare and the provisions of the United States Constitution—or, to be more accurate, by the provisions of the United States Constitution alone. The fact that naval or land forces seized the property and caused it to be brought in for adjudication, does not make the cases turn upon mere military authority for rules of decision. If the seizure were by private and uncommissioned persons, the status of the property itself would not be changed. Government may, either under the law of nations or municipal law, adopt the individual act. The question as to the right to seize is one between the Government and the seizor alone, and the claimant cannot interpose that objection. If the government can authorize a seizure, it can determine exclusively whom it will entrust with that duty. Under a government of law, if that duty is confined expressly and exclusively to particular persons, and others seize, whereby a trespass has been committed by them, the title to the property itself is not changed thereby. So, in proceeding for a forfeiture *in rem*, if the property was seized by any one and has come in *custodia legis*, the sole primary question is as to the status of the property, whether it is lawfully forfeited or not. Where a distributive share of the proceeds is granted to official or commissioned captors, the uncommissioned receive nothing. As to seizures by private persons, see 10 *Wh.*, 306; 1 *Gall.*, 563; 3 *Wh.*, 246, 310; 2 *Wh.*, 76; 6 *Wh.*, 1; 4 *Wh.*, 100; 8 *Pet.*, 495; 16 *Pet.*, 342.

It is an error to suppose, as was shown in several cases decided in this court last year, that a citizen has not authority to arrest, *flagrante delicto*, either offending property or persons, or that a soldier is deprived of or exonerated from that duty, except so far as military discipline may enjoin. Indeed, the analogies between military and civil action are closer than is often supposed.

The object of a battle is to capture the foe, and all the force necessary is used for that purpose. When captured, the prisoners cannot lawfully be maltreated or deprived of life. This rule, *flagrante bello*, is like the common-law rule, *flagrante delicto*. A commissioned civil officer authorized to arrest—or indeed any one, who witnesses the offence—has the legal right to use the force necessary therefor, but when the capture or arrest is made, the prisoner is not to be punished or abused by his *captor*. An army holds the captured foes merely as prisoners of war; but the appropriate judicial tribunals can alone decide upon any civil offence committed, and inflict the punishment therefor.

It has been held by *Justice Nelson*, and by *Judges Dunlap*, *Cadwallader*, *Betts*, and *Sprague*, since this war commenced, that, under the Constitution and laws of the United States, property found "adherent to the

rebels" is to be treated as *rebel* property, just as in foreign wars such property is pronounced, *jure belli, quasi* enemy property.

The forfeitures imposed by the act of August 6, 1861, are for a violation of *municipal* laws, just as in revenue cases smuggled goods are seized and condemned. The offending *property* is confiscated. Many revenue acts impose no personal penalty on the offending party, but pursue the *property, in rem.* Other revenue cases have imposed forfeiture on the *res,* and also fines and imprisonment on the *person.* In such cases there are different modes of trial necesary under the Constitution—as indictment, trial by jury, &c.—before inflicting the *personal* punishment, and, it may be, before imposing the *fine;* and actions of debt for the prescribed penalties in money, informations *in rem* against the property, &c. The true line of distinction in such statutes is commented upon in the following cases: United States *vs.* 1960 Bags of Coffee, 8 *Cranch,* 405; Schooner Rapid, 1 *Gall.,* 295; The Dickenson, *Marriott's Dec.,* 1; The Recovery, 6 *Rob.,* 348; King *vs.* Whittaker, 1 *Hagg.,* 145; Anonymous, 1 *Gall.,* 24; Ketland *vs.* The Cassius, 2 *Dall.,* 365; 3 *Dall.,* 297; 2 *Cranch,* 406; 4 *Cranch,* 443; 2 *Rob. Ad.,* 245; 2 *Wash. C. C. Rep.,* 522; 1 *Gall.,* 3, 177; 2 *Gall.,* 4, 306; *Pet. C. C. Rep.,* 10; 1 *Mason,* 88; 2 *Gall.,* 552, 522, 210.

To the two-fold capacity of the Government, already stated, reference must be had in adjudications on this class of questions, in order to apply correct rules of decision. In suppressing *insurrection* the object is to enforce municipal sovereignty over all subject thereto. If, in the exercise of municipal authority, the rights of neutrals or of neutral nations become involved, international law must be appealed to, in the adjustment of such controversies; for that is the only system of jurisprudence to which neutrals are amenable, unless found within our territorial jurisdiction. If the property seized be *American,* it will be judged according to our municipal code; if it be *foreign,* by the law of nations. Here is no *superadding* of belligerent rights; for they always existed. The occasion does not confer any new *power,* but merely calls for the exercise of an admitted right. This is true with respect to every department of jurisprudence. When facts call for the application of equity or common-law rules, the courts proceed as the facts demand. No new *power* is given, but merely an application made of a preëxistent power. There is great danger of being misled, therefore, in supposing that war either *superadds* or *grants* new powers to a government. Grants of governmental authority can be made in no such way. A foreign foe by commencing a war or invasion against the United States, does not change the United States Constitution. No department can receive from the acts of an enemy new constitutional authority. To hold otherwise, would be to make the internal laws of the country, and even its organic law, not the sport of mere chance alone, but the plaything of foreign

caprice. The lives, liberties, and property of American citizens would not rest for protection, intra-territorially, upon constitutional safeguards, but upon the arbitrary will of foreign nations. If the fact of invasion overthrows, *ipso facto*, and of its own intrinsic force, the Constitution of the United States, then American liberty has no assurance of safety for an hour; our written Constitution has no solid or stable foundations on which to rest. And still worse would the case be when insurrection occurs. If that act of overt hostility to the Constitution *overthrows* it, then every insurrection against it becomes a success, necessarily, no matter what the result of battles may be. Still, that absurdity is the necessary consequence of the doctrine, that the Government receives new, or extra-constitutional, or unconstitutional powers from the existence of war, of any kind. At the very moment it is assailed, and when its chosen officers are required most vigorously to defend it against assault, it would vanish—disappear—pass out of existence! Can any proposition be more illogical or erroneous? In vindicating constitutional power against armed treason, it must be steadily and faithfully held to be *supreme*. All legitimate power and rightful authority depend thereon. The moment its defenders desert it, the citadel is lost; and the insurrection works a revolution, in which not only constitutional supremacy, but the Constitution itself, is engulfed. If those entrusted with the administration of affairs have any powers *not* granted, how do they obtain them? From the people? By what organic act of the people is such a new grant evidenced? Is it from the rebels or the invading foe? How do they acquire the right to remodel or abolish the internal organization of a country before they conquer it? Their dominion depends on conquest alone. In no other way have they any power to delegate. If, then, neither the people nor rebels have conferred *extra-constitutional* powers upon an officer of the country, how can the latter procure such powers? Outside of his commission he is no officer at all—he has no more authority than a private citizen. He is *officially* a mere agent, with just so much authority to act for the principal as has been delegated to him. And no action beyond the limits of his agency binds the principal at all. This is true of all officers of the Government.

Acts of Congress without constitutional sanction, judgments of courts beyond their jurisdiction, and acts of the President without legal authority, have always been pronounced *void;* they are, in the nature of things, void. Any other hypothesis would convert all limited agencies into absolute control over the principal's rights, and make of constitutional governments absolute despotisms, or, what is far worse, would make *every* public officer, in every department of the Government, an uncontrolled and uncontrollable tyrant—a social and legal chaos. Each judicial, min-

isterial, or legislative officer, no matter how humble or exalted his sphere of duty, would be not only without restraint, but clothed with absolute prerogatives. To such extreme follies would such doctrines lead.

The powers of each department of the Government, and of every individual officer under it, are fixed and certain. He cannot transcend them and do an official or obligatory act. The chief justice cannot assume the functions of commander-in-chief, and direct armies in the field. Such an act would be simple usurpation. Nor, on the other hand, can the President constitute himself the law-making or judicial department of the Government, or exercise the functions of either of them. This is equally true in war and in peace. The Constitution is not ambulatory or evanescent, shifting from one place to another, or vanishing and reappearing, as the whims or passions of individuals, whether hostile or friendly, may dictate.

But, under the belligerent powers granted to the Government, it may exercise, on all proper occasions, and at all appropriate times, every belligerent right deemed advisable. And it often happens that, at the same period of time, it must exercise both intra-territorial and extra-territorial powers, the one upon its own citizens, the other upon neutrals and upon adverse belligerents. Hence, in the present contest, so far as foreign nations are concerned, the United States is a belligerent power, and exercising belligerent rights. From that fact springs the right to seize the contraband property of other nations on the high seas, and condemn it as *prize of war*. Upon those subject to its municipal sovereignty it exercises municipal jurisdiction; upon others, international. Hence in the various cases of capture upon the high seas, the rules of decision will vary according to the foregoing rules. If an American vessel is seized for the violation of an act of Congress, it should be proceeded against *municipally;* if a foreign vessel is seized beyond our territorial jurisdiction, it can be judged only in accordance with the law of nations, for neither territorially nor otherwise is it subject to our municipal regulations. This distinction may not have been observed in all cases, because the attention of courts was not called thereto, by jurisdictional or other exceptions; but it is nevertheless true and universally applicable. The case of *Slocum* and *Wheeler*, and other adjudications to the same effect, maintain the principle. Often it is of serious import; for if the decree happens to be made when the court has no jurisdiction, it will not be respected by other tribunals, and almost endless litigation will ensue. A kindred error has been presented in the argument, and results also from confounding the intra-territorial and extra-territorial powers of the Government. If it be conceded, *argumenti gratia*, that under the laws of nations a belligerent has a right to capture or destroy all the public and private property of the enemy nation, wherever found, on sea or land, it

by no means follows that he can apply those rules of *foreign* conquest to domestic wars. That proposition, extra-territorially, depends upon the law of nations. The internal constitution of a country does not necessarily extend, *eo instante*, over every portion of the enemy country subjected to the temporary military dominion of the former. In Great Britain that rule is held to be the result of the British constitution, (*The Foltina*, 1 *Dods.*, 452,) but in the United States the opposite is held to be true. The distinction is illustrated by the United States Supreme Court in the following cases: *Fleming* vs. *Page*, 9 *How.*, 603; *Cross* vs. *Harrison*, 16 *How.*, 164.

A large portion of the American Union, all of which is *de jure* subject to the United States Constitution, is, at the present time, under the actual control or dominion of insurrectionists. In conducting military operations to expel or subdue that usurped insurrectionary dominion, and assert successfully the lawful supremacy of the United States Constitution and laws there, it must be constantly remembered that the supremacy thereof, *rightfully*, or in contemplation of law, is still over that insurrectionary region. The moment the false is overthrown, the true resumes its rightful sway.

The disturbing cause is removed, but no new disturbing cause or usurpation can rightfully take the place of the former wrongful dominion. The *de jure* has become also the *de facto* authority. The usurper has been expelled, and the rightful sovereign restored. Judge Sprague, in "*The Amy and her cargo*," recently held, in accordance with immutable principles, that no sovereign can acquire the rights of a conqueror over his own lawful dominions. He owes protection to all of his subjects, and if, in consequence of his own weakness, he so far fails to give to them the needed protection for a time, as to suffer them to pass under the dominion of a foreign or domestic foe, his own fault or misfortune does not entitle him, on recovering his former sway, to impose upon them, as his subjects, any other burthens than his rightful office justifies. In brief, he has regained his former jurisdiction and dominion, nothing more. Especially is this true with constitutional governments. How can the Government of the United States rightfully abdicate or abandon any of its duties under the Constitution, in any part of the country? For a time its legitimate authority may be successfully defied, yet it is legally bound to suppress the insurrection, and restore its lawful supremacy, with all the constitutional safeguards, privileges, and rights temporarily overthrown by the usurpers. It cannot exercise the belligerent rights of a foreign conqueror over any portion of the country subject to the Constitution and laws. That Constitution and those laws were *supreme* there, all the time *de jure*, and have at last become so *de facto*. It is still, however, an internal, and not an international, question.

So long as the insurrectionary organization is treated as rebellious, instead of being recognized as an independent government, so long the Constitution, and not international law, must be the rule of action. The moment the rebels are admitted to be technical "enemies," and the country under their dominion "enemy country," that moment they become, by virtue of the admission, a power independent of the United States. None of the United States laws will longer be obligatory upon them. They will not be amenable to the United States laws for the punishment of treason, or any other municipal offence. Until such recognition, their usurped dominion is merely insurrectionary, and the country they hold is not in law an enemy country; nor can the rules of international law applicable to enemy's country obtain over it. Hence, when Congress passes acts, within its constitutional powers, declaring certain violations of United States law criminal or causes of forfeiture, and prescribes certain modes of enforcing them, which modes are borrowed from known doctrines or practices under the laws of nations, such modes become *municipal*, and reference is to be had to the laws of nations for rules of *interpretation* merely, and not for the sources of Congressional authority. The right to punish is still a municipal right, and is to be pursued as such.

In plain terms, it is not an enemy country, and none of the international doctrines with reference to such a country, have any application to the case. By proper attention to this principle, much confusion will be avoided. The doctrine here stated has been forcibly expressed by Rutherforth in his Institutes:

"The act of the people, however injurious it may be, will not increase the power of the sovereign, or will not give him a right to any more power than the constitution has given him; for the sovereign power was originally vested in the collective body of the society, *called the people.* The sovereign cannot, of right, claim any greater part of it than the people have granted to him by compact in forming the constitution. When the people violate the compact on their side, it is voidable at the sovereign's discretion. If he chooses to abide by it, he has no right to any other power than he derives from it, and if he chooses to make it void, instead of gaining a greater part of the supreme power, he will lose what he has, and it will, as in other cases, revert to the people. Thus the people may claim to change the constitution when the sovereign invades their part of the power, whereas he can only claim to *continue* the constitution, though the people should causelessly and wrongfully invade his part. This is the whole of his right, and no event whatever can give him a more extensive right without the consent of the people. If the struggle between him and them should end in civil war, and victory should declare on his side, yet conquest will not of right increase his power, however strongly we may put the case in his favor by supposing the breach of the constitution to have begun from the people, and the whole blame of the war rests on them. For the use of force, though it should be superior to the force opposed to it, only serves to support a

right which might otherwise have been hindered from taking effect; it does not produce a right where there was none before."

A wrong view of the foregoing elemental principles, coupled with an entire ignoring of the American constitutional theory, has been used by the insurrectionists in their vain attempts to justify their rebellion. The United States Government is not like a sovereign in the foregoing view, one party to a compact and the people the other party; much less fractional portions of the people. That Government is the *agent* of the people, clothed with delegated powers to a limited extent, and charged with specific duties. It can enter into no compacts with the people whereby a bargain is to be struck between them, as if they were independent contracting parties. The people of the whole Union, and of all the States, *ordained* a Constitution which is the supreme law for all. They provided a mode of amending the same. If the required assent is obtained in the form ordained, then the amendment is valid. But the minority resident in no part of the country have a right, either with or without the consent of the Government, to violate the ordained will of all. Even on the theory of a compact, *each* State and each citizen is not an independent party thereto, with a right to judge for himself when the compact is violated, and to avoid it. The whole people of the States constitute the contracting parties, *inter sese*, and agreed that a constitutional majority should alone amend their organic laws, or abolish the same. How, then, could a small minority, either of States or of the people, assume, on any conceivable theory—even of a compact—to declare the Constitution no longer obligatory upon them?

But, in the true sense of Rutherforth's proposition, it is just and sound. The government, by a successful vindication, whether peaceably or forcibly, of the rightful supremacy of its constitutional authority, does not and cannot acquire rightful unconstitutional authority. A suppressed wrong gives no right to commit a like wrong. A triumphant vindication of the right does not abolish or annihilate the right vindicated. But the United States Constitution does not belong to *one* part of the people alone. It is the common patrimony of *all*—their palladium of life, liberty, and property. Any lawless change or violation of it is a wrong upon all. The successful or unsuccessful refusal of a part of the people to obey its requirements, or share in its blessings, cannot justly deprive the others of their right to its beneficent provisions. The loyal are to be as much injured by the overthrow of its safeguards as the disloyal. Such an assault upon it would be a double wrong to its friends. They have never sought to throw it off, but have loyally clung to it, and with filial devotion. They have a right to demand that it shall remain intact as their supreme law.—*Wh. Elements*, 616; *Amy and Cargo, Law Rep., June*, 1862.

The doctrine of "superadded" belligerent rights, then, does not justify or excuse unconstitutional action in the internal administration of affairs. The language of the United States Supreme Court carefully observes the distinction contended for. "It is not," said Chief Justice Marshall, "intended to say that belligerent rights may not be superadded to those of sovereignty. But admitting a sovereign, who is endeavoring to reduce his subjects to obedience, to possess both sovereign and belligerent rights, and to be capable of acting in either character, the manner in which he acts must determine the character of the act. If, as a legislator, he publishes a law ordaining punishment for certain offences, which law is to be applied by courts, the nature of the law and of the proceedings under it, will decide whether it is an exercise of belligerent rights, or exclusively of sovereign power; and whether the court, in applying this law to particular cases, acts as a prize court or as a court enforcing municipal regulations."

* * * * * * * *

[Here is omitted the discussion of another legal question, not applicable to the main propositions.—9 *p.*]

"No. 639" is a libel of information. It sets out a cause of forfeiture very fully under the act of August 6, 1861, describing the persons who sold the property for rebel use, in violation of that act, as "persons unknown," &c. As that act is valid, the mode of procedure lawful, and the pleading proper, with perhaps some surplusage, the exceptions to so much of the libel are not well taken. The seizure having been described as made on land, the pleading, perhaps, would have been more technically accurate if it had been styled an "information." At the trial the parties will, of course, be entitled to a jury, as the case is not of admiralty and maritime jurisdiction, under the principles already announced.

The libel contains another count, or articulation, purporting to be under the act of July 17, 1862. One objection is, that said libel nowhere avers that this is the district into which the said property was *first* brought. The language of the act is: "Proceedings *in rem* shall be instituted in the name of the United States in any district court thereof * * within which the property above described, or any part thereof, may be found, or into which the same, if movable, may be first brought." The wording of the act is not so clear as it might have been. Although it appears from the libel that the property was found literally in this district *court*, in contemplation of law, (for it was, when this libel was filed, and it is so averred, in the custody of the marshal under a previous warrant issued upon an instance libel,) yet it is evident that it was not the intention of the pleader to make that averment, save in conformity with a rule of this court, adopted to prevent the multiplication of warrants of arrest *in rem*, when the property is already in custody. The act, of course, means that the

district court of the district within which, &c., (the district, and not the *court*, within which the property may be found,) shall have cognizance of the case where *real estate* is proceeded against; for the next clause says, "or into which the same, if *movable*, may first be brought."

The property in question is *movable;* yet so far is the libel from averring this to be the district into which it was first brought, that it distinctly mentions two or more districts into which it was taken after seizure and before it was brought here. It will be observed that the act does not say from what place brought, or after what time. It may mean after seizure, or subsequent to the expiration of the period contemplated by the sixth section. But that point is passed until it shall become necessary to decide it; for it is not free from difficulty, inasmuch as it may be that such property will, in some cases, be *found* in the district, and in others be *brought* into it, &c.

As the libel fails to make the necessary jurisdictional averment for a proceeding in this court under that act, and even states the case out of court, the exceptions, so far as they relate to that supposed cause of forfeiture, will be sustained. Proceedings under the act of August 6, 1861, may or may not fall within the admiralty jurisdiction of the court; and if they should do so, and the act of March 25, 1862, be applicable thereto, a different course of proceedings will have to be taken from that to be followed under said act of July 17. It is possible that the true construction of said last-named act will cause all, or nearly all, cases under it to fall on the common-law side of the court, involving trials by jury, &c., which would be a wholly different mode of adjudication from the course in admiralty. Hence it is proper to keep the proceedings wholly separate—not to attempt to blend them in one action. The views of Justice Story and of Sir Wm. Scott, as quoted in an early part of this opinion, concerning similar practice in prize and instance cases, respectively, are applicable here.

The act of March 25, 1862, makes provision for various proceedings, peculiar to prize cases. If it be held to apply to *all seizures* under the acts of July 13, 1861, and of May 20, 1862, and also under the acts of August 6, 1861, and of July 17, 1862, then prize commissioners will have to take possession of all such property, in the first instance, and do all that is therein prescribed. It is not known what has been the course of proceedings under those statutes in other district courts; but in this district all such cases have been considered, technically, as municipal and not prize cases, and therefore not requiring the intervention, expense, and delay of prize commissioners. As none of those cases, thus far, has been heard on the prize side, *jure belli*, and as in the opinion of this court none can be so heard, unless neutral rights on the high seas shall arise, (which is hardly probable here, so far inland,) it seems that the statute

in question can hardly apply. The language of the act seems to contemplate only such cases as involve prize proceedings, *jure belli*, and those which follow like proceedings. It says "all *maritime* captures, and captures and seizures made under the slave-trade acts." The last class of cases, it is known, though prizes of forfeiture under the *statutes*, instead of *jure belli*, are generally adjudicated according to the modes universal in prize cases *of war*. Hence the phrase "*maritime captures*" should receive a like construction, and be held to include only such cases as require prize commissioners. The captors under the slave-trade acts receive a distributive share of the fund, by virtue of the municipal grant; and such captures are made on the high seas, or in American ports, by force of Congressional or municipal statutes. The authority to act being municipal, not international, so far as the proceedings adopt any of the modes known to technical prize tribunals, they are not by force of extra-territorial but of municipal law. The court, in adjudicating upon them, is a municipal tribunal. Hence such "*maritime* captures" must conform to that statute. It should be noticed that the act itself seems to recognize a distinction between "captures" and "seizures"—"to all *captures* and *seizures* made under the laws for the abolition of the slave trade." A capture has been judicially defined to be "the taking by military force." A seizure has been generally considered the taking by a civil officer. If the seizure be on water, it falls within admiralty and maritime cognizance; if on land, within common-law jurisdiction.

The word *maritime*, as used in the Constitution and judiciary act, was designed to remove all doubts as to instance jurisdiction over seizures of property water-borne, *infra corpus comitatus*, under revenue and other prohibitory statutes. There may be captures on land, *jure belli*, as of *booty;* and if jurisdiction thereof is vested by Congress in United States courts, then those courts will proceed, constitutionally, as *prize courts* of war, but not as admiralty courts; for it has already been shown that such courts never had jurisdiction in *admiralty* of land captures. Such land captures, not being maritime, could not be made to fall within the maritime jurisdiction vested by the Constitution in the judicial department. Hence, captures on land, like the cases now before the court, are certainly not within the provisions of the act of March 25, 1862. If they had been, the question would have arisen, whether the property, being already in the custody of the marshal under a previous warrant of arrest, could have been taken even temporarily out of his custody, and placed under the control of prize commissioners? The difficulties springing therefrom would indicate an irregularity of practice, such as has been already adverted to. This remark applies with equal force to the libel in case "No. 940."

It is said, the act (of August 6) does not include the *public* property

of the rebels, or of the so-called Confederate Government. From the rules concerning *booty* and naval captures heretofore laid down, it is evident that whatever doubt may exist as to the confiscability, *jure belli*, of *private* enemy property on land, none has ever obtained concerning the *public* property of the enemy, with the exception of *res sacræ*, &c. But as this is a municipal law, and is in conflict with no rule known to the law of nations, but was evidently designed to subject to capture and forfeiture all property which is actually being used for hostile purposes, or which is about to be so used, it is not perceived by what mode of construction its terms can be restricted to such property as has not actually been transferred to the rebel government or become a part of its army supplies. If it had been already sent to the rebel army and was captured from its camps, it would at once, under the articles of war, if of the description therein named, be held by the capturing army for direct governmental use, and, it may be, require no judicial condemnation. The rules discussed in *Goss* vs. *Withers* and in *Cook* vs. *Howard* would be applicable. And it is apprehended that Judge Betts held correctly in a recent case, where application was made for delivery of captured property to the claimant under appraisement, that such delivery is a matter, neither of *course*, nor of *right;* certainly, *jure belli*, no such principle is known, nor could it be tolerated. Otherwise, the claimant, who might, on adjudication or hearing, prove to be an alien enemy, would receive possession of the very contraband property which it was the object of the law to keep from falling into hostile hands.

A similar construction has been put upon the statute concerning revenue seizures under the acts of July 13, 1861, and of May 20, 1862. It is a matter of judicial discretion whether such delivery *pendente lite* will be ordered. The act of March 3, 1847, does not govern in such cases; for, by the terms of those statutes, (of July 13 and May 20,) proceedings under them are to be according to the act of 1799, which provides that "upon the prayer of the claimant, &c., *it shall be lawful for the court*" to appoint appraisers, &c. Hence the court, or the judge by the amendatory statute of April 5, 1832, must determine in each case whether appraisers shall be appointed or the prayer granted.—*Brig Struggle*, 1 *Gall.*, 476.

The language, as well as the whole scope, of the act of August 6, 1861, is broad enough to cover the *public* property of the rebel armies and rebel government. The property named is, that "acquired, &c., with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting such insurrection," &c., and "all property" so used with the knowledge or consent of the owner. If the property has already passed into the possession of a rebel army, or of the rebel government, or of its agents, it is *prima facie* in such possession

for rebel use. The claimant will have to rebut the *prima facie* case made by the fact of such rebel possession.

The minor objections made in the argument, dependent on the phraseology of the acts of August 6, 1861, and of July 17, 1862, it is not necessary to consider in detail. They are covered by the rules for pleading under similar statutes, laid down by the United States Supreme Court in the following cases:

The Caroline *vs.* United States, 7 Cranch, 496.
Schooner Hoppet *vs.* United States, 7 Cranch, 389.
The Samuel, 1 Wheaton, 9.
The Palmyra, 12 Wheaton, 1.
The Merino, &c., 9 Wheaton, 391.
The Mary Ann, 8 Wheaton, 380.

The *first* and *second* and *fourth* exceptions to the libel in "No. 939" will, therefore, be overruled, and the *third* exception sustained. The exceptions overruled refer to so much of the libel as is framed under said act of August 6, and the exception sustained to so much of said libel as is under said act of July 17.

The libel in "No. 940" is framed under no statute whatever. It is based on the theory that all property taken from rebels in arms, on land or water, within insurrectionary districts, is lawful *prize of war*, and may be captured, brought in, and condemned as such, without any act of Congress therefor. The averment is, that the same was captured by a commissioned officer in the United States army, and the forces under his command; and also that certain vessels which *transported* him and his forces to the point where they disembarked, co-operated in said capture. If the design of the pleader was to bring the case within the rules governing a joint land and naval capture, other allegations than those made by him would be necessary. The coöperation in such cases must be *actual;* that is, at the time of the capture actually made; the two forces must have been operating together for the same purpose, and with reference to the particular capture. Whether the same rules as apply to joint naval captures would govern in all respects, it is unnecessary to discuss.

Stella del Norte, 5 Rob., 349.
The Dordrecht, 2 Rob., 55; 3 Phill., 499.
The Invincible, 2 Gall., 42.
8 Cranch, 189, 368.
7 Wheaton, 355.
2 Wheaton, App. 58.

It is not necessary to aver, even in joint *naval* captures, that the different vessels were duly commissioned, and departed from the same port, to cruise against and capture all enemy property on the high seas, &c.,

and that whilst they were so employed, one of said vessels encountered and captured the enemy vessel in question. The disputed rule about being in *sight* at the moment of capture is a dispute which relates solely to the distribution of prize money, and which, under the act of March 25, 1862, can no longer exist in American courts. But, in this libel, the language seems to contradict the hypothesis that the vessels were in sight at the time of the capture; for it alleges that the land forces embarked at Helena, in Arkansas, on said vessels, "for the purpose of going on a scouting expedition or reconnaissance" into Mississippi; that they did disembark in the latter State, and "penetrated into the country;" that "while so employed they discovered, and by force of arms," captured from rebels in arms the property in question, &c., &c. The next distinct allegation is very general in its terms: to the effect that the land forces were greatly aided by the vessels that they embarked upon, and were *transported* by the latter to the place of debarkation, near the place of said capture; "at or near which place the said vessels, their officers and crews, coöperated with said troops in making said capture," &c., &c. Whether the allegation that the troops "penetrated into the country," and there "discovered" the rebels in arms from whom they made the capture, is consistent or not with the other allegations, it is not important to consider. In prize proceedings the *general* allegation of capture as prize of war is sufficient, and the question of "prize or no prize" is the primary one to be adjudicated. The averments which relate to the *mode* of capture can affect only the distribution of the proceeds, and if the property be held "lawful prize," the claimants cannot be heard upon the other point; for they have no interest therein. The opinion of Justice Story, in *The Invincible*, (2 *Gall.*, 42,) is very full and conclusive as to the allegations of joint capture in this case. It must be borne in mind that *transports* do not share in captures; for they are not naval forces—are not *commissioned* for naval enterprizes; and, therefore, even when there is a conjunct expedition for land captures, they are treated as no part of the capturing fleet.

The Cape of Good Hope, 2 Rob., 282.

The Dordrecht, 2 Rob., 57.

The British Guiana, 2 Dod., 151.

The Stella del Norte, 5 Rob., 350.

Claimants cannot be heard to dispute whether the captors were duly commissioned or empowered to make the capture. The Government alone can raise that question; for it alone must determine whether it will adopt a seizure made by a private citizen, or leave him to be treated as a trespasser; in other words, whether it will ratify an act done in its name by an uncommissioned party or not. If it affirms the act, then it becomes an act of the sovereign, who has the full belligerent

right to make all lawful captures, *jure belli*, from the enemy. The private captors in such cases receive no share of the proceeds.

The Amiable Isabella, 6 Wh., 1.

The Dos Hermanos, 2 Wh., 76.

A similar rule obtains with regard to municipal seizures.

Wood *vs.* The United States, 16 Pet., 342.

Gelston *vs.* Hoyt, 3 Wh., 246.

Taylor *vs.* The United States, 3 How., 197.

The Caledonian, 4 Wh., 100.

Carrington *vs.* Merchants' Insurance Co., 8 Pet., 495.

As the averments concerning coöperation on the part of the vessels named were not made by the pleader for the purpose of raising a question as to prize money, but (as is stated) merely to show that this was either a land capture by land forces alone, or a naval capture with the assistance of land forces—a conjunct enterprize, so as to present to the court the two questions separately: First, as to land captures by land forces; and, secondly, as to captures on land by naval forces, either singly, or conjointly with land forces—the details to which reference is made, become unimportant in this stage of the inquiry. The main proposition has already been considered, in the light of authority, whether under the law of nations private property on land is subject to capture as lawful prize, either by land or naval forces, or by both in actual cooperation, and, also, the limits of naval authority both as to places and kinds of property. No decision is pronounced on any one of those propositions; nor does it become necessary in these cases.

It may be sufficient to remark, that if private enemy property on land is confiscable, *jure belli*, then it is competent for a belligerent sovereign to commission either land or naval forces to capture the same as prize of war; and it possibly may hold good, that the capture of such property by private persons may be affirmed and adopted by the sovereign, just as in captures on the high seas, or in municipal seizures. The question which would thus be presented, would be one solely between the sovereign and his subject. And, further, the dicta expressed in the dissenting opinion by Justice Story, in *Brown* vs. *The United States*, and in his opinion on the circuit bench in the original case, reported in 1 *Gall.*, 563, (The Emulous,) may be correct, viz: "The power to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water," are broad enough to cover, *jure belli*, all movable property and choses in action belonging to the subjects of the adverse belligerent; and the word *reprisal* covers the capture or destruction of every description of enemy property, public or private. If that be correct, notwithstanding the conceded fact that modern usages of war are directly to the contrary, as well as the weight of modern authority and

the whole of American diplomacy, yet as that power, if it exists, was decided by the United States Supreme Court, in *Brown* vs. *The United States*, to be vested exclusively in Congress, until it passes an act therefor no such belligerent right during a foreign war can be exercised or authorized by the President, or any officer of the army or navy of the United States. Therefore, whether courts are to consider the present contest as *war* in the fullest sense of the term, or in the more restricted sense of the use of military force to suppress an insurrection or a treasonable outbreak; whether as a public, or domestic or civil war; still, in the absence of an act of Congress authorizing such sweeping and universal *reprisals*, they cannot be lawfully made. Indeed, it is well known that Congress has not yet authorized commissions of any kind to be issued to privateers against rebel property afloat on the high seas; and that its whole legislation, since the insurrection commenced, has been based upon the theory that the rebels have not belligerent rights, *jure belli*, but are still subject to the municipal sovereignty of the United States Constitution and laws. Hence the statutes of treason, conspiracy, and general confiscation. A paper capture, like a paper blockade, has no legal existence—is a mere nullity. A capture, *ex vi termini*, requires actual seizure and possession—a firm possession for a reasonable length of time; it may be, if made on land, for twenty-four hours after the battle is over, or by bringing the property seized *infra præsidia*, or by holding the same until the *spes recuperandi* is lost.—2 *Gall.*, 42; 8 *Cranch*, 189, 363; 7 *Wheaton*, 350.

No civilized nation now recognizes a paper blockade; and a blockade is usually an act of war. A belligerent *right* to do a thing is not the actual doing of it. A right to conquer the country of a foreign enemy is not its actual conquest. So the right to capture is not an actual capture. The one is a power which it is permissible to exercise, the other is a successful exercise of the permitted power; the one a power not called into practical use, the other an act accomplished; one is *in posse*, the other *in esse*. If the legal status of the present contest is, as argued by proctors, viz: a war to be governed solely by the law of nations, and consequently an international conflict between two existing and independent nations, most of the acts of Congress passed with reference to the rebellion will be wholly inapplicable; there can be no mere *paper* capture of rebel property of any kind—no lien, therefore, upon it for treason committed. But such is, in no sense, the present legal *status*. The distinction has been already stated at great length in this opinion, together with the principles on which it rests. The propositions and discussions and controversies involved are intraterritorial, except so far as other nations may be affected by naval or other operations beyond the municipal jurisdiction of the United States. The political department

of the Government is alone authorized to decide that *status;* and so long as it adheres to the rightful supremacy of the United States Constitution and laws over the whole country—that part in rebellion, as well as that still loyal—the *judicial must administer the laws applicable to municipal sovereignty, with respect to every question brought before it for adjudication.* It is not prepared, it is to be hoped, to admit, directly or indirectly, that the constitutional authority of the United States—its legitimate municipal sovereignty—is legally at an end in any part of the Union, and even if, by possibility, it could become so regardless of its solemn duty, its admission or action upon such an hypothesis would be a nullity in law. It has been entrusted with no such power. It must, on all such questions, follow the political department, in which alone such power is vested. It can neither make, nor unmake, constitutions or laws; declare war, or negotiate peace; pardon offenders, or absolve citizens from the duties of allegiance. Nor can a wrong make a right—the infraction of a law overthrow the law. Were it otherwise, there could be no legal punishment for crime, or safeguard for life, liberty, or property; for the moment a law was violated, and its protective care, therefore, most needed, the law itself would cease to exist; an act of murder, for instance, would abolish all law for its punishment, and an act of plunder all laws for the arrest or imprisonment of the offender. In a word, there could be neither law nor crime; for where there is no law there can be no transgression. If the transgression annihilates, by its own intrinsic force, the law transgressed, there can then be no transgression. Such a theory is suicidal—it subverts all moral, social, and legal problems—it makes society itself impossible, and reduces the world, not only in all its governments, but in all social and family organizations, to absolute anarchy and chaos.

The libel in "No. 940" is based on the theory of the fullest belligerent rights known to the laws of nations. But, as has been shown, without an act of Congress, those rights could not be exercised, even if international relations, and consequently the international code, governed the case. As, however, the country has, thus far, not been so unfortunate as to be plunged into those calamitous depths which would dictate so humiliating an admission as the independence of the so-called Confederate Government; and, as all men sworn to support the Constitution in its full and undiminished supremacy *de jure* must earnestly hope no such fatal conclusion is destined ever to be reached; the courts must still maintain that, within the municipal jurisdiction of the United States, the federal Constitution and laws are supreme—and their municipal sovereignty to be upheld.

It is not deemed necessary, therefore, to enter upon the wide field of inquiry opened by the argument concerning the war powers of the Gov-

ernment, nor to examine the disputed boundaries between the executive and legislative departments of the United States. As the Government, with the combined powers of all three of the departments, in which governmental authority is lodged and among which it is distributed, cannot, even as a totality or unit, transcend rightfully the limits of its creation or organism, so no one department thereof can do any valid act beyond its prescribed constitutional sphere.

That elemental truth is sacred to our national life. No one member of that governmental body can say to another "I have no need of thee," and refuse to perform its allotted functions.

Avoiding, therefore, that perplexing, and as yet unnecessary, inquiry, it is sufficient to decide now, that the theory on which the libel in case "No. 940" is based cannot be admitted, and is wholly inapplicable to the subject under consideration. The law of nations is not the source of governmental authority over the internal administration of affairs within this country, but the Constitution of the United States. So far as that Constitution adopts the international code, it is in force, but no further.

But, it is contended, that the libel in question rests for authority, also, upon the acts of August 6, 1861, and of July 17, 1862. To what has been already said on that head, it is only necessary to add, that it has not been so framed. Its allegations are not within the scope of either of those acts.

Where a forfeiture under a statute is to be enforced, the libel must bring the case within its provisions. This has not been done, generally or otherwise. There is not only no reference to either statute, but many of the essential elements of forfeiture specified in them are omitted altogether. From aught discovered in the libel, the property in dispute was owned at the time of its capture by loyal citizens of Missouri or Illinois; had been plundered from them and taken by the rebel force in arms into Mississippi, where it was recaptured. If so, it would fall under neither of those acts of Congress. True, if the case were a prize case, the claimant might show that fact, and the court would apply the rules of recapture. But, as it cannot be maintained as a prize case, *jure belli*, and as it has not the necessary elements to bring it within the statutes, and further, as the other case, "No. 939," embraced in this opinion, is under the statute of August 6, it would be remarkable to suppose a legitimate proceeding under the same statute for the same thing and bottomed on the same facts, would, at one and the same time, fall legitimately on opposite sides of the court. It was proper for the pleader to test the question by filing both libels; but when the court decided that the other libel was the proper one under the statute, it virtually pronounced this untenable. Similar comments apply to the other statute.

Another test of the irregularity of practice in these cases may be

drawn from rules governing appeals. The *res* is actually in custody here upon a warrant issued in case "No. 934," for a violation of the acts of July 13, 1861, and of May 20, 1862; and those cases are still pending. Whilst so in custody the libels in these cases were filed. If it should be held that the action in this case cannot be maintained, and an appeal is taken, how can the *res* be sent up to the appellate court, as the law requires? It will still be in custody here, to await the decision in the former case, and cannot be removed by such subsequent proceedings. Or, if the former action be maintained and forfeiture decreed, with an order of sale and distribution of proceeds, and no appeal therefrom be taken, would the *res*, or its proceeds, be withdrawn from the custody of this court and from the effect of its final adjudication, in order to abide the decision of the appellate tribunal in an entirely distinct and subsequent proceeding, not affecting the merits or validity of the case determined in this court? Well might Sir William Scott and Justice Story say such endless confusion is not permissible.

It must be remembered, too, that the acts of July 13, 1861, and of May 20, 1862, declare the property *forfeited for the offence committed*, while the act of August 6, 1861, merely declares it "subject to prize and capture.' The former acts seem to work a forfeiture, *eo instante*, and consequently the transmutation of title would refer to the time of the offence; but, under the latter, by analogy, such transmutation of title may take effect only from capture and judicial condemnation, and relate back only to the time of capture. And further, if it be true that municipal forfeitures are often swallowed up in the more general operations of the laws of war, still greater confusion would ensue from a multiplicity of suits on opposite sides of the court. Where by the terms of an act forfeiture is worked by the offence, the transmutation of title *relates* to that time, and all subsequent transfers are invalid.—8 *Cranch*, 398, 417; 8 *How.*, 381.

Those cases reverse Justice Story's opinion in "The Brig Mars," (1 *Gall.*, 192.) Where the first seizure or capture is abandoned, all rights under it are gone, and a new seizure is necessary. The last captors are the only ones to be considered in such cases.—*The Josefa Segunda*, 10 *Wheaton*, 312; *The Ann*, 9 *Cranch*, 289.

The main propositions discussed and ruled in these cases may be thus restated:

First. Captures, *jure belli*, are justiciable under the law of nations, and not by force of municipal sovereignty.

Second. They belong to the capturing sovereign; and whether any part thereof will be awarded to the individual captors depends solely on the grant of the sovereign.

Third. Maritime captures, or captures on the high seas, or captures

near the coast by naval forces, or by conjoint land and naval forces, are cognizable by prize courts, as such, which, whether organized under English commissions or acting as United States district courts, under the Constitution and laws of the United States, are international tribunals administering the law of nations.

Fourth. Captures of "enemy" property on *land*, if public property belonging to the adverse sovereign and confiscable by the laws of war, have seldom been subjected to judicial condemnation. The capturing sovereign may, if he pleases, grant an interest therein to the individual captors, and may submit the judicial questions arising therefrom to the determination of any of his courts or to commissions, but he is not bound to do so. The title in *land* captures does not depend on judicial condemnation, but on the certainty of possession—such as the detention *sine spe recuperandi*, &c.

Fifth. Captures on the high seas are made where no law obtains except the law common to all civilized nations, to wit: the law of nations. Hence the validity of such captures must be determined by an international tribunal whose rules of decision are international law, unmodified and unaffected by municipal authority.

Sixth. Captures of enemy property on land, as by invasion of the territory of the adverse belligerent, depend on the laws of conquest, independent of the rights or interests of neutral or friendly nations, and involve questions between adverse belligerents only. Such captures, by modern usage, are confined to public property—that is, property belonging to the adverse sovereign, exclusive of works of art, &c., and of the private property of non-combatants or peaceful inhabitants.

Seventh. Under the rules and articles of war adopted by the United States, such public property of a warlike character is seized and held by military officers, for the United States alone, and no part thereof is distributable to the individual captors.

Eighth. The foregoing rules relating to foreign wars, which are extraterritorial, are not applicable, except partially, to domestic or internal wars, which are intraterritorial.

Ninth. The source of authority in foreign wars is the law of nations; in domestic wars, municipal sovereignty. The distinction is between international and constitutional law. But questions with foreign powers, whether arising in peace or war, must be determined by international and not municipal rules.

Tenth. As the authority or power of the United States over the extraterritorial relations of the country is vested in the federal Government, the latter must be governed therein by international law, which furnishes in such cases the rules for its guidance and the limitations upon its action.

Eleventh. As, within the sphere of the constitutional grants of power,

it is *supreme* intraterritorially, it enforces the municipal sovereignty by rules of its own prescription—that is, by acts of Congress. It exercises its municipal sovereignty, not through international tribunals acting as do prize courts, *jure belli*, but through its own municipal courts, which are governed solely by its own internal laws.

Twelfth. Hence, in a domestic war, captures on the high seas from a third nation or neutral power are to be adjudged by an international tribunal whose rules of decision are derived simply and exclusively from the international law, because such captured property is not subject to the municipal sovereignty, either from the character of its owners or from the locality where found. Its owners are not subjects of the capturing sovereign, nor are the high seas within his territorial jurisdiction.

Thirteenth. But such captures of *rebel* property, whether on sea or land, are cognizable by municipal tribunals, because the owners are subjects of the capturing sovereign and amenable to his authority. He has over his own subjects and their property, and over his own territorial domains, all the rights and powers of a municipal sovereign. He derives those powers, not from the law of nations, but from the internal constitution of the country. The law of nations cannot increase or diminish his constitutional authority. All questions between him and his subjects are internal or municipal solely, and consequently justiciable only in municipal courts or tribunals.

Fourteenth. To determine which of many municipal tribunals has cognizance of a particular act of municipal sovereignty, recourse must be had solely to municipal law; which law, in United States cases, is the federal Constitution and acts of Congress.

Fifteenth. Captures of rebel property may fall under the sixth section of the act of July 13, 1861, or under the act of August 6, 1861. If waterborne, it is justiciable on the instance side of the admiralty courts; otherwise, on the common-law side of United States courts. Under the act of July 17, 1862, other principles obtain; for the confiscation therein named is punitive of treason and necessarily falls on the common-law side, whether the seizures under it are made on land or water.

Sixteenth. The act of March 25, 1862, was evidently designed to apply to prizes, *jure belli*, (except captures under the slave-trade acts,) for the machinery of prize commissioners, testimony in *preparatorio*, &c., have reference solely to such cases. It is competent for Congress, in regulating the practice in municipal cases in United States courts, to adopt so much as is deemed proper from any system of practice not incompatible with constitutional requirements; but the cases do not take their character or quality from the "practice" adopted, but from their intrinsic nature. Thus, as the slave trade is not piracy by the law of nations, but simply by municipal law, a case under that law is a municipal case,

to be tried as the statutes direct, and not by an international tribunal under the law of nations. If the mode of trial prescribed by statute is the same as that used in prize courts, *jure belli*, it is none the less a municipal and not an international case—is cognizable by a municipal, and not an international tribunal. The authority to punish proceeds from the internal constitution and laws. So with respect to all acts of Congress for the suppression and punishment of rebellion.

Seventeenth. It is competent for Congress to vest in United States civil courts the power to try all *land* as well as maritime captures, *jure belli;* and it is equally competent for it to withhold such power over land captures. It is bound, however, in good faith, to furnish a competent court for the trial of all maritime captures under the law of nations.

Eighteenth. The technical phrase "prize of war" relates only to captures, *jure belli*, from an adverse or neutral sovereign or his subjects, to be governed by international law. All other captures or seizures, that is, of property belonging to his own subjects, depend for validity upon his rightful, or constitutional, or lawful authority over the same. They are purely internal or municipal questions, and cognizable solely by municipal tribunals. Whether they are to be enforced, or the property condemned, the municipal law must decide. The law of nations cannot control or influence the decision.

Nineteenth. The power to suppress a domestic insurrection is a constitutional grant, and is to be exercised according to constitutional provisions. The Constitution, *de jure*, is not enlarged, altered, repealed, or suspended, in any of its provisions, because an insurrection exists. If one grant in that instrument rendered all other provisions nugatory, then the Constitution would consist solely of that one clause—the whole be subordinate to a part. The President, *virtute officii*, is commander-in-chief of the army and navy, in peace as well as war. He constitutes the whole Executive Department, and one of his executive functions is that of commander-in-chief. That one function is not superior to the aggregate functions of his presidential office; one is not superior to all. He derives no additional power from that command. The Executive Department includes all executive functions, and each function is limited by the restrictions and prohibitions which cover each and all.

Twentieth. No sovereign can conquer his own territory, or any part thereof, so as to have over the same the rights of a foreign conqueror, or of pure conquest. A limited sovereignty cannot thus become absolute. In overthrowing lawless resistance to rightful authority, he does not become clothed with rightful lawlessness; he does not, by a species of legerdemain, acquire the lawless authority which he has overthrown, change his power from what it rightfully was, into some new and ungranted right or rule. If he has successfully vindicated the Constitution against

its assailants, he has acquired no right to overturn it, and substitute in its stead a new instrument, or his own capricious will. To contend for such a result is to make him an insurrectionist, revolutionist, or rebel. The sovereign in this country is the "supreme law," and its assailant is the rebel. Suppressed assault upon it leaves it intact, in full force and effect. Hence in insurrectionary districts the Constitution and laws pursuant thereto are *de jure* supreme, notwithstanding their efficient and successful administration may for a time be obstructed; but the moment the obstructions are removed, the *de jure* becomes also the *de facto* supremacy. No new order of supremacy is thereby established, but merely the rightful authority of the old is vindicated.

Twenty-first. The distinction between international and constitutional or municipal law being fundamental, and absolutely essential to national independence, cannot be overlooked or disregarded without falling into the gravest errors, alike detrimental to the rights of parties, to national independence, and to civil and political liberty. When it is said that the law of nations is a part of the common law of Great Britain and of the Constitution of the United States, nothing more is meant than that the municipal sovereign in the former country, and the Federal Government here, are clothed for all extra-territorial or foreign relations with their full conduct and control; that the absolute sovereignty of the nation, so far as all foreign powers are concerned, is so lodged by the nation itself. Hence, as to all foreign questions and nations, the Federal Government is absolute; it represents the independence and equality of this nation as a coequal among equals in the family of nations; but as to all domestic or internal questions, its powers are defined and limited by its internal organization—the Constitution of the United States. It has no other or larger authority over its citizens than what has been granted by its organic law. The grant of powers is written and definite—just the same whether war or peace exists. Whether a granted power is called into full exercise or potential activity will depend upon the exigencies of the case; but those exigencies do not make a new grant, nor alter or abrogate the old grant. It continues the same, unchanged. Thus, the President is commander-in-chief in peace as well as war; that function of the presidential office is fixed and complete; but the exigencies of peace or war may call into action the rules of law legitimately applicable to each. Those rules are not new; but until a case arises for their application, they lie unused or dormant.

The law of nations, therefore, in the internal administration of the country, is not the *source* of power, nor does it enlarge or diminish the constitutional authority of the Federal Government. Whatever the Constitution permits, it can do, whether the law of nations prescribes a different rule or not; although, as the Supreme Court has intimated, it

cannot, as a civilized power, violate the just and humane rules of modern warfare, even in a civil war, without putting itself, *quoad hoc*, beyond the pale of civilization. A domestic insurrection is an internal question, and to be treated accordingly. All legal questions, therefore, which arise from the efforts of the Government, under the Constitution, to suppress such insurrection, are, so far as United States citizens and their property are concerned, intra-territorial or municipal, to be heard and disposed of by municipal tribunals, and not by courts sitting under or administering the law of nations.

Twenty-second. It follows, therefore, that captures, whether on sea or land, of rebel property, are not "prize of war," *jure belli*, and do not fall under pure prize law, or acts of Congress relating to prizes, *jure belli*. If acts of Congress authorize the capture and condemnation of rebel property, the jurisdiction is on the instance or common-law side only of the United States courts, whether said captures are denominated seizures, captures, prize of war, or by any other name. The real nature of those cases is determinable by the fundamental fact that they arise solely from the exercise of intra-territorial sovereignty. A change or confusion of names does not alter the inherent nature of the act. Whether such municipal captures are exclusively for the benefit of the Government, or the proceeds are to be shared by individual captors, must be determined by the acts of Congress authorizing such captures; and there is no act granting a distributive share thereof to the captors as prize of war within the meaning of mere prize statutes.

The exceptions to the libel in "940," therefore, are sustained, and the libel dismissed.

FINAL PROCEEDINGS.

A trial before a jury was subsequently had under the act of August 6, 1866.

The evidence was to the following effect: The cotton belonged to the so-called Confederate Government. A person claiming the right to control it came through the rebel lines and sold it to an army contractor of the United States, who, with the assistance of a United States Colonel, proceeded to the place where it was stored, eighteen miles distant from the Mississippi river, and within the rebel lines, using Government transports, wagons, and soldiers on the expedition. On the way, a rebel force was encountered; a brisk skirmish ensued; several U. S. soldiers were either killed or wounded; and the U. S. military forces succeeded in reaching the "Coldwater," where the cotton was stored in charge of a rebel officer. The cotton was captured, hauled to the Mississippi river

at a point several miles below Helena, loaded on Government transports, and forwarded to Helena, then a military post. At the latter place, General Steele happened to be in temporary command; and so soon as he learned what had occurred, he seized the cotton and turned it over to the quartermaster. So soon as General Steele was transferred to another post, the quartermaster delivered the cotton to said contractor, as the private property of the latter. It was then shipped on a steamboat, *en route* north. When it reached Memphis, it was reseized by order of General Sherman and shipped to the quartermaster at St. Louis, to be disposed of as the proper court might decide. During the interval between its discharge by the quartermaster at Helena and the reseizure by General Sherman's order, the said army contractor and others claiming title thereto, sold to the present claimants, who were informed of the dispute with reference to it.

The court held, that if the cotton had been transferred by its original owners, or with their consent, to the Confederate Government, it was liable to capture and condemnation by virtue of the act of August 6, 1861; that the title of the United States related back to the time of the original capture at Coldwater, unless there had been a voluntary abandonment of said capture; and that if the abandonment at Helena was through a fraudulent connivance between the said contractor and quartermaster, and if the present claimants knew at the time of their respective purchases what the facts were concerning the capture and claims to the property, then their purchasers were not protected, and said abandonment at Helena was not voluntary within the meaning of the legal rule previously stated.—12 *Mod. Rep.*, 92; *Salkeld*, 223; 5 *T. R.*, 112; 8 *Cranch*, 155, 398, 417; 3 *Wheat.*, 311; 16 *Pet.*, 362; 8 *How.*, 381; 1 *Story's Rep.*, 134; 1 *Gall.*, 192; 13 *Pet.*, 167; 10 *Wheat.*, 312; 9 *Cranch*, 289.

The verdict of the jury was for the United States on the issues joined; and thereupon the cotton was condemned and sold for the use of the United States.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

UNITED STATES
vs.
910 BALES OF COTTON—WITHENBURY & DOYLE, GRIEFF & ZUNTS, G. A. LE MORE & CO., CLAIMANTS.

HON. SAMUEL H. TREAT, JUDGE.

Opinion of the Court.

In April, 1864, the United States Navy seized 910 bales of cotton, on the bank of the Ouachita river, in the State of Louisiana. That part of Louisiana was then subject to rebel dominion, and had been from the breaking out of the rebellion. The cotton was brought into this district, and libelled as prize of war. It was sold under an interlocutory decree, and the proceeds deposited to the credit of the court. There are three claimants to these proceeds: Withenbury & Doyle, Grieff & Zunts, and G. A. Le More & Co. These claims are now submitted to the consideration of the court. The proofs disclose this state of facts:

1. The cotton was raised by Tatum & Simmons, near the place of seizure, and sold by them to the Government of the so-called Confederate States in December, 1862.

2. Withenbury & Doyle, being citizens of the State of Ohio, purchased the cotton from A. W. McKee, an agent of the Confederate States, in January, 1864. When the rebellion commenced, they were owners and masters of two steamboats, running between New Orleans and upper Louisiana. With these boats they rendered services to the Confederate authorities. The cotton was sold to them in consideration of these services. They, however, insist that the services were rendered under compulsion. They had the permission of the General commanding the United States forces in the Department of the Gulf to pass through the United States lines into upper Louisiana, and bring to New Orleans and sell twenty-five hundred bales of cotton.

3. On the capture of New Orleans by the United States forces, in May, 1862, the Louisiana State Bank, a monied corporation located in that city, had on hand a large amount of Confederate currency. In December, 1862, the commander of the United States forces in New Orleans authorized the Bank to dispose of this currency in the purchase of cotton within the rebel lines. Under this permission, an agent of the bank passed through the United States lines into upper Louisiana, and purchased the cotton in question of a sub-agent of McKee, in August, 1863. And in March, 1864, the bank sold the cotton to Grieff & Zunts.

4. Early in March, 1864, Leon Queyrouse, a naturalized citizen of the United States, residing in New Orleans, purchased the cotton of Buckner, an agent of the Confederate States. And, later in that month, Queyrouse sold the cotton to G. A. Le More & Co., citizens and residents of France.

Section 5 of the act of Congress of July 13, 1861, among other things, provides that "it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof, where such insurrection exists, are in a state of insurrection against the United States, and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue."

The same section also contains this proviso: "That the President may, in his discretion, license and permit commercial intercourse with any such part of said State or section, the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest, and such intercourse, so far as by him licensed, shall be conducted and carried on in pursuance of rules and regulations prescribed by the Secretary of the Treasury."

On the 16th of August, 1861, the President issued a proclamation, declaring "that the inhabitants of the said States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, and Florida, (except the inhabitants of that part of the State of Virginia lying west of the Alleghany mountains, and of such other parts of that State and the other States hereinbefore mentioned as may maintain a loyal adhesion to the Union and Constitution, or may be from time to time, occupied and controlled by forces of the United States engaged in the dispersion of said insurgents,) are in a state of insurrection against the United States, and that all commercial intercourse between the same and the inhabitants thereof, with the exceptions aforesaid, and the citizens of other States, and other parts of the

United States, is unlawful, and shall remain unlawful, until such insurrection shall cease or has been suppressed."

We do not entertain a doubt as to the true intent and meaning of the act of July 13, 1861. Indeed, the language is so clear and explicit as to render discussion unnecessary. The act interdicts all commercial intercourse between the loyal and insurrectionary parts of the Union during the existence of the rebellion, except what may be licensed by the President, and conducted under regulations to be prescribed by the Secretary of the Treasury. It expressly declares all commercial intercourse, not within the exception, to be unlawful. Prohibition is the rule, and license the exception. The inhabitants of the loyal and disloyal districts are rendered incapable of dealing with each other so long as the rebellion continues. Every contract between them, not founded on a license, is simply void. It neither passes title nor gives a right of action.

The act invests the President with power to put the prohibition into operation, and define the limits of insurgent territory. This power was exerted by the proclamation of August 16, 1861, and from that date the prohibition had all the force of positive law.

It is clear that the contract between Withenbury & Doyle and the Confederate agent was within the prohibition. It was an act of commercial intercourse between citizens of Ohio and of that part of Louisiana in insurrection, in violation alike of the letter and spirit of the statute. The contract was therefore null and void. The claimants acquired no title to the cotton. The question of ownership remained unaffected by the transactions between the parties. They had no legal capacity to trade with each other. While the rebellion continued, it was not in the power of these claimants to acquire title to this property except through a license from the President.

It is equally clear that the Louisiana State Bank was within the prohibition. It is true that the city of New Orleans was originally within insurgent territory; but, on its capture and permanent occupation by the United States forces, it fell within the last exception in the President's proclamation, and ceased to be in a state of hostility to the United States. Such was the ruling of the Supreme Court of the United States in the case of "The Venice," (2 *Wallace*, 258.) And the President, in his proclamation of March 31, 1863, in again defining the limits of the insurrection, expressly excepts New Orleans. And this act of the President was prior, in date, to the purchase by the Bank. It follows, that, after the 6th of May, 1862, the prohibition extended to the inhabitants of New Orleans, and they had no more right to trade with upper Louisiana than had the inhabitants of Ohio or Illinois. Nor can the purchase of the bank be sustained under the permission of the commanding General. The President alone could authorize commercial dealing within the Con-

federate lines. As the bank acquired no title, it had none to transfer to Grieff & Zunts. The latter have, therefore, no interest in the property in dispute.

The case of G. A. Le More & Co. is just as free from doubt. Queyrouse, through whom they claim, was clearly within the prohibition. He had no legal capacity to deal with the Confederate agent. He acquired no title to the cotton, and consequently had none to transfer to Le More & Co. The fact that they were citizens of France does not alter the case. If they had purchased directly from the Confederate agent, perhaps they would have acquired title. But it is useless to enter upon the discussion of that question. It is enough for all the purposes of this case to say, that they reeeived no title to the cotton for the reason that Queyrouse had none to impart.

All of the claims must be dismissed.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

UNITED STATES
vs.
137 BALES OF COTTON—JOHN H. MCKEE, CLAIMANT.

HON. SAMUEL H. TREAT, JUDGE.

Opinion of the Court.

On the 16th of March, 1864, the United States Navy seized 137 bales of cotton and a lot of rope, bagging, and leather, on the bank of the Red river, in Louisiana. The proceeds of this property are now claimed by John H. McKee. The proof shows this state of the case: The claimant has been a resident of New Orleans since the commencement of the rebellion. The cotton, rope, bagging, and leather were the individual property of A. W. McKee, a resident of upper Louisiana, and, from October, 1862, to the fall of 1864, the general agent of the Treasury Department of the Confederate States, to purchase and dispose of cotton in the State of Texas and that part of Louisiana lying west of the Mississippi river. The claimant purchased the property in question of A. W. McKee, on the 4th of March, 1864. The proof tends to show that he had a license to trade in insurgent territory, issued under the provisions of the act of July 13, 1861. And he had permission from the commander of the United States forces in the Department of the Gulf to pass through the United States lines into upper Louisiana and bring away any property that he might there purchase.

Section 5 of the act of Congress of July 17, 1862, provides "that, to insure the speedy termination of the present rebellion, it shall be the duty of the President of the United States to cause the seizure of all the estate and property, money, stocks, credits, and effects of the persons hereinafter named in this section, and to apply and use the same, and the proceeds thereof, for the support of the army of the United States." The enumeration of persons includes "any person hereafter holding an office or agency under the Government of the so-called Confederate States of America." And the section thus concludes: "and all sales, transfers, or conveyances of any such property shall be null and void; and it shall be a sufficient bar to any suit brought by such person for the

possession or use of such property, or any of it, to allege and prove that he is one of the persons described in this section."

A. W. McKee accepted and held an important official position from the Government of the Confederate States after the passage of this statute. And he continued to hold that position when he transferred the property in question. The statute was therefore strictly applicable to him and the property. It deprived him of the power of making any valid disposition of the property. It expressly declared any sale or transfer to be void. In this state of the case it is very clear that the claimant acquired no title. His purchase was simply void, because A. W. McKee had no capacity to dispose of the property.

The claimant's license gave him no right to deal in this property. A statute subsequent in date to the one under which his license issued prohibited any sale or transfer of the property. The provisions of the act of July 13, 1861, so far as they are in conflict with those of the act of July 17, 1862, must give way. It is a familiar principle of law, that where two statutes are inconsistent with each other, the later statute must prevail. To the extent of the repugnance between them, the later statute is a modification or repeal of the former. If, therefore, the license issued under the act of July 13, 1861, in terms authorized the claimant to trade generally within insurgent territory, the act of July 17, 1862, must be considered as restricting that authority to the property of those holding no official relation to the Government of the Confederate States.

The claim must be dismissed.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

OCTOBER TERM, 1865.

ELGEE'S ADMINISTRATOR *vs.* LOVELL.

HON. SAMUEL F. MILLER, JUDGE.

Opinion of the Court.

The plaintiff sued the defendant in the circuit court of the State of Missouri, for the county of St. Louis, to recover possession of five hundred and seventy-two bales of cotton.

The defendant appeared and made affidavit that he held the cotton for the Government of the United States, as its agent, and prayed that the case might be transferred to this court, under the act of Congress of 3d March, 1863, which was ordered by the court.

In this court plaintiff filed the ordinary declaration in detinue, to which defendant pleaded the general issue and four special pleas. A demurrer to each of these special pleas was interposed by plaintiff.

The second plea, which was the first of the special pleas, averred, in substance, that the plaintiff was, at the time of the committing of the grievances in the declaration mentioned, a citizen and resident of the State of Louisiana, which had been declared to be in insurrection by the proclamation of the President, and was himself engaged in giving aid and comfort to the so-called Confederate States of America.

The third plea averred that the cotton mentioned in the declaration was held by the defendant as the agent of the United States, as abandoned property, seized and held under the act of Congress of March 12, 1863; but did not aver that it was taken or found in any district or State, the inhabitants of which had been declared to be in insurrection by the President's proclamation.

The fourth plea simply alleged that the cotton in question was the property of the United States.

The fifth plea alleged that the cotton in the declaration mentioned had

been taken in the State of Mississippi, within the district declared to be in insurrection by the President's proclamation, by Ralph S. Hart, a special agent of the Treasury Department, as abandoned property, and was sent to St. Louis and placed in the possession of defendant as agent of the United States, to be sold, or otherwise disposed of, in pursuance of the act of March 12, 1863, concerning captured and abandoned property in rebel districts.

The demurrers were argued by Glover and Shepley for plaintiff, and by Hughes, Drake, Broadhead, and Hill for defendant.

The second plea is evidently directed to the personal character of the plaintiff, and may be regarded as a denial of his right to bring any suit in this court, on the ground of his being a public enemy in time of war, or as a denial of his right to bring suit for property found in an insurrectionary district.

Looking at it in the first point of view, it must be held to be a plea in abatement in analogy to the plea of alien enemy, and is bad for want of any averment that the plaintiff was a public enemy at the time the suit was brought, for such a plea must have reference to the *status* of the plaintiff at that time.

But the plea of alien enemy is a good plea in *bar*, when the action is brought on a contract, and when the plea shows that the contract was made in time of war by a party in allegiance to the Government in whose courts the suit is brought, with a public enemy; and it is argued that the declaration in the present case alleges a bailment by plaintiff to defendant on a condition to redeliver on demand, and that the suit is therefore on a contract, and the plea is a good bar. It is true that there are authorities to show that the action of detinue is sometimes considered as an action of contract, and it is also true that the allegations of this declaration do in words set out a contract of bailment. But without pursuing the authorities as to when detinue will be treated as *tort* or as contract, it is sufficient to say that we think it would be straining the technical point beyond its just use to hold the plaintiff in this case to the literal meaning of the words used in his declaration. The form of words, like that in trover and ejectment, is purely artificial and conventional, and is never required to be proved on trial. It being clear, from what is upon the record, that the suit is grounded on a tortious seizure by the defendant of the cotton mentioned, we will not hold on this demurrer that he has sued on a contract because he has been compelled to use this fictitious form by the rules of pleading.

It is claimed, however, that the plea is good under section six of the act of July 17, 1862, (12 *U. S. Statutes*, 591.)

That act provides that the property of certain classes of individuals may be seized by the President, or under his orders, and turned over to

the courts of the United States, and then, by a regular course of judicial proceedings, be confiscated and sold. The closing provision of the sixth section of the act reads thus: "And it shall be a sufficient bar to any suit brought by such person for the possession or use of such property, or any of it, to allege and prove that he is one of the persons described in this section."

Waiving the somewhat doubtful question whether this plea does show that the plaintiff is one of the persons described in that section, we are of opinion that the bar applies to property seized under that act and to no other property. There is no claim here that this property was seized under the confiscation law, nor that defendant had any purpose to libel it in any court for condemnation.

The defendant having expressed a wish to amend this plea so as to make the allegation of the plaintiff's character apply to the time of bringing this suit, he is permitted to do so now, and such amendment being made, the demurrer to that plea is overruled.

The third plea is held bad for want of any allegation that the property which is claimed to have been seized as abandoned property was so seized in any State or part of a State the inhabitants whereof had been declared to be in insurrection against the United States.

The fourth plea is bad, because while the general property in the cotton may be in the United States, this does not exclude the idea of such a special property with right of present possession in plaintiff as will enable him to sustain the action.

The fifth plea presents the main ground of defence on the merits. It is a full statement of facts, which show that the cotton mentioned in the declaration was seized in one of the districts declared by the proclamation of the President to be in a state of insurrection, by a special agent of the Treasury Department for that district, as abandoned property, and was held by defendant when suit was brought, as agent of the Government, about to dispose of it as the act concerning that species of property required.

The objection taken to the plea is, that it does not aver that the property when taken possession of by the Treasury agent *was* captured or abandoned property, nor show in any other manner that it was rightfully seized by such agent. Although able arguments on both sides of this question have been urged concerning the rights which war confers on military and civil officers in an enemy's country, and on the part of the Government in reference to permitting suits to be brought for property in the hands of revenue officers, a majority of the court are of opinion that the solution of the question must be found in the construction of the act under which the Treasury agent proceeded, namely, the act of March 12, 1863, (12 *U. S. Statutes*, 820.)

This statute enacts that property in any of the States or parts of States, the inhabitants whereof have been declared to be in insurrection, which has been captured by our military forces or been abandoned by its owners, shall be taken into the possession of special agents of the Treasury Department, appointed for that purpose, and, after appraisement, may be used by the United States, or sold, and proceeds of the sale be deposited in the Treasury. Section three, after providing that said agents shall give bond, with sureties, in such amounts as the Secretary may require, and as often as he may require, and directing them to keep, in proper books, accounts of all their transactions, adds the following clause: "Any person claiming to have been the owner of any such captured or abandoned property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof, in the Court of Claims, and on proof of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, receive the residue of such proceeds after the deduction of any purchase money which may have been paid, together with the expenses of transportation and sale of said property, and any other expenses attending the disposition thereof."

Was it the intention of Congress to make this the exclusive remedy of any person whose property had been taken by the proceeding under this act, or was it intended to permit the Treasury agents to be sued for the possession or proceeds of such property wherever the party interested might find a court of general jurisdiction?

The hardship on the one hand of allowing these agents to seize upon any property anywhere in the insurrectionary districts at their discretion without liability to the law, and on the other hand of subjecting persons in their situation to be harrassed by litigation at the hands of any one claiming an interest in the property, have been forcibly urged upon us. In this connection it is not inappropriate to remark that their functions were to be exercised, so far as seizure of property was part of their functions, in an enemy's country. It was, further, a necessary condition that this could only be done in an enemy's country which had been overrun and occupied by our military forces. With all the movable property of the country subject to seizure and destruction by the military forces, or by the more lawless mob in their absence, it could be no great hardship to any loyal man to have his property taken in charge by the United States Treasury agents with a provision for its restoration under proper circumstances, or that of its proceeds when sold; and certainly Congress was not legislating for the benefit of the disloyal.

On the other hand, if an agent of the Government exercising this function, so delicate and so odious in an enemy's country, surrounded by hostile inhabitants, was to have every step of his proceedings tested by

courts of law, and this to be permitted by the very Government he was serving, it may well be imagined how useless would be his office to the Government, and how few men of responsibility would be willing to accept it.

It is to be observed, also, that in the rebel districts where these acts were to be done there were no courts in existence save such as were the offspring of military rule. *Inter arma silent leges.*

Looking to the provisions of the act itself, we find that these agents are required to give bond, with accepted security, on which, no doubt, they may be sued for wilful violation of their duty. The act makes the Government a mere holder of the property, or its proceeds, as trustee for the proper person, and provides a means of ascertaining who that person is. The Government itself could not be sued for this or any other act of its agent, without the right which is given by this provision; and of course can only be sued in the manner and in the forum thus pointed out. To suppose that Congress had sent its civil agents into a hostile country to perform these delicate functions, and had left them liable to be sued in any court where they might be found, for full compensatory or vindictive damages, while it provided a special forum, and a more limited liability for the Government, is a reflection on that body which I think it has not deserved.

The act evidently contemplates that property may be seized and sold, the proceeds of which ought to be returned to its owner. And this it provides shall be done through the Court of Claims. Is this remedy less applicable to property which may not have been actually abandoned, but seized under the belief that it was, than to cases where it was actually abandoned, or captured without being abandoned? It is urged, with some plausibility, that this remedy in the Court of Claims assumes that the property to which it applies was captured or abandoned; and if it was not, that the remedy does not apply. I think this is sticking in the bark, and that it was intended by Congress to give this remedy in all cases of seizure by agents acting under this law, whether the property comes strictly within those designations or not, and that on any such application the plaintiff will only be required to prove his ownership and his loyalty, and no question will be raised about the abandoned condition of the property in that court.

I think, for these reasons, that this was intended to be the exclusive remedy in this class of cases, except so far as an agent might be held liable, in some instances, for wilful violation of his duty, by suit on his official bond in the name of the United States for the benefit of the party injured.

The demurrer to this plea is overruled.

At a subsequent day in the term, plaintiff filed replications to the second and fifth pleas, which were demurred to.

These replications were the same in substance, and alleged that plaintiff had at some time before the bringing of the suit, not more specifically shown, taken the oath prescribed by the amnesty proclamation of the President of December 3, 1863, and faithfully kept the obligations of said oath.

The court holds that the act of March 12, 1863, evidently contemplated that property of loyal citizens might and would be taken under it, for the provision for asserting claims to it in the Court of Claims is restricted to such persons as can prove that they "have never given any aid or comfort to the present rebellion." Such persons, never having been guilty of any offence against the Government, need no pardon, and are certainly in as good condition as a pardoned traitor.

Yet, as we have already shown, these persons can only find remedy in the Court of Claims, as prescribed by the act of Congress, even if the property be owned by a citizen of a loyal State.

The amnesty of the President cannot, and was not intended to, place a man who had committed treason in a better situation, in reference to such property, than that occupied by a loyal citizen of a loyal State.

This replication is therefore bad as an answer to the fifth plea.

Does it remove the disability to sue, which is set forth in the second plea?

That plea is not founded on any act of Congress, nor any case growing out of our State or National jurisprudence. It is a part of the law of nations, recognized and enforced in all civilized countries, that in time of war a citizen or subject cannot sue in the courts of the country with which his nation is at war. This grows out of the principle that persons, citizens or subjects of the nations then at war, are themselves enemies to each other, and in a state of hostility. In the war of the current rebellion this principle is applicable to all the citizens of the rebellious States found within the so-called Confederate lines.—*Prize Cases*, 2 *Black*, 674, 693; *Mrs. Alexander's cotton*, 2 *Wallace*, 421.

According to this principle, a man residing within the Confederacy, and subject to its control, was, in the sense of international law, a public enemy, although he may have committed no act of disloyalty. He is so far a public enemy, while the war was flagrant, that his property found on the high seas is lawful prize of war, and that we cannot in our courts maintain any suit against a citizen residing in a loyal State.

These are the disadvantages imposed upon him by the law of nations, but not by our local or national jurisprudence. And as no proclamation of the President can alter or change this law, I doubt very much whether

it can relieve any party from the disabilities which it imposes in our courts.

This disability is independent of any personal guilt, and grows out of no violation of any criminal law or statute. The right of the President to grant pardon for all offences against the laws of Congress, to extend amnesty wherever there had been personal guilt or actual violation of law, is not questioned. But whatever his power may be, I feel very sure that the President intended no more than this. He had no idea of placing the traitors who availed themselves of his proclamation in a better position than those who, residing in the insurrectionary districts, had always maintained their allegiance to the Federal Government.

Such persons need no pardon. In my judgment, all their personal and proprietary rights are fully restored when the war is over. The temporary disabilities which the necessities of a civil war imposed upon them cease with that necessity; and, in all courts and in all places, so far from needing a pardon, they merit the gratitude of the Government and of the people. It is absurd to suppose that the President, if he had the power, intended to place traitors in a better position than such loyal persons occupied, or that they needed Executive clemency to restore any of their rights.

That plaintiff may, after taking the oath, have become a loyal citizen, and, at the time of bringing this suit, may have been under no disability from residence, may be true; but this replication does not show it, and is therefore bad.

SUPREME COURT OF THE UNITED STATES

THE GREY JACKET AND CARGO.

Supplemental Matter.

Hon. HUGH MCCULLOCH, *Secretary of the Treasury:*

The petition of Timothy Meaher, a native of the State of Maine, and for thirty years a resident of the State of Alabama, respectfully shows that he is a loyal citizen of the United States, and has ever been such; that, as a resident of the State of Alabama, he resided in the so-called confederacy until he succeeded in escaping therefrom, in December, 1863; that during the time he remained there he was twice imprisoned by the rebel authorities on account of his loyalty to the old flag and for his Union sentiments; that early in the year 1863 he conceived the plan of escaping from the confederacy with his family and property; that for this purpose he built, of timber, cut upon his own land and sawed at his own mills, a vessel, which he intended to load with cotton, and, taking on board his wife and children, escape from the confederacy to the north, where his mother resides. That he commenced building this vessel in March, 1863, refitting her machinery from old river steamers, purchasing her rigging and the iron used in her construction himself, and finally loading her with cotton, a large portion of which was grown upon his own plantation, the rest purchased by him for the express purpose of loading her. That said vessel was completed in December, 1863, after nearly a year had been consumed in building her.

That he became such an object of suspicion to the confederate authorities that he was obliged to abandon his plan of taking his family with him, and that the authorities refused to permit him to sail, except upon the express condition that he should clear from Mobile to the port of Havana, and that he should account to the so-called confederate government through its agents for one-half of the proceeds of said cargo of cotton, which proposals, after a long delay, he acquiesced in only for the purpose of obtaining a clearance for his vessel. And he further says that he disclosed at the time his plans and intentions to those confidential friends in whom he could implicitly trust only, as the discovery of them by the authorities would have endangered his life.

That he sailed from Mobile on the 30th of December, 1863, and that on the morning of the 31st he sighted the United States gunboat Kennebec; that he did not attempt to escape, but raised the American flag, it being the only flag he had on board, and one that he had preserved during the whole time of his residence in the so-called confederacy.

That upon being boarded by the officer of the Kennebec your petitioner demanded protection for himself and property, but that the commanding officer seized both vessel and cargo as prize of war.

That said vessel and her cargo, consisting of 449 bales of cotton, (all of which was the sole property of your petitioner,) was sent first to Pensacola and then to New Orleans, Louisiana, where your petitioner was brought a prisoner; nor was he allowed to communicate with the shore in any manner until

the 18th day of March, 1864. That as soon as he could reach the proper officer, he took and subscribed the President's amnesty oath of December 8, 1863, before the clerk of the United States district court for the eastern district of Louisiana, when he ascertained that proceedings had been instituted in said court for the condemnation of said vessel and her cargo while he was detained as a prisoner; and that afterwards a decree of condemnation was entered in said court, and said vessel (the Gray Jacket) and her cargo were sold by the United States marshal of the eastern district of Louisiana; all of which your petitioner alleges was unjust, and in direct violation of the spirit and letter of the amnesty proclamation of President Lincoln of December 8, 1863.

Wherefore your petitioner avers, and will satisfy the honorable Secretary of the Treasury, that he was a loyal man attempting to escape from the confederacy with his property, in order to meet his wife and family, whom he had made arrangements should live at the home of his aged mother in the State of Maine; that he had no intention to violate the act of Congress regulating commercial intercourse with the insurgent States, of which he was a citizen, or any law of the United States, although the act which he was doing at the time of the seizure aforesaid, apart from the intention and purpose with which it was done, might be a legal and technical violation of said act, so that he may have no defence in a court of law, especially as the district court in which he was tried, ruled and held that the intentions and purpose of your petitioner could have no legal effect in the determination of the cause; and as his seizure by the Kennebec, then employed in enforcing said act of Congress, under the proclamation of the President, could in no sense be a capture to render the property maritime prize of war.

Your petitioner humbly prays the protection of the United States, and that justice may be done, and that the technical forfeiture be remitted, by order of the honorable Secretary, in accordance with the eighth section of said act; and that the proceeds of the sale of his vessel and cargo, now in the custody of said court, may be released to him, upon the payment of such legal costs and expenses as may have been incurred by the officers of the United States in the proceedings thereunder. And your petitioner will ever pray.

TIMOTHY MEAHER,
Per S. W. COZZENS, *his Att'y*,

BENJ. F. BUTLER, *of Counsel*.

To the honorable HUGH MCCULLOCH, *Secretary of the Treasury*:

The petition of Timothy Meaher, a native of the State of Maine, and for thirty years last past, a resident of the State of Alabama, respectfully shows that he is and ever has been a loyal citizen of the United States.

That being a resident of Alabama, with his family and property all there, at the breaking out of the rebellion, he was unable to leave the confederacy, except as hereafter set forth; during that time he was twice imprisoned by the rebel authorities because of his exhibition of loyalty to the flag and the Union.

That early in the year 1863, conceived the plan of escaping from the confederacy with his family and property.

For this purpose he built, of timber, cut from his own land, and sawed at his own mills, a vessel which he called the Grey Jacket; that his intention in building her was to load her with cotton, so as to be able to get away a part of his property, take his family on board and leave the confederacy forever. He commenced building this vessel in March 1863, and employed men to refit her machinery from old river steamers which belonged to him; he purchased her iron and rigging himself; that he loaded her with cotton grown upon his own plantation, or purchased by him only for this express purpose. That he completed his vessel in December 1863, after consuming nearly a year in her construction

and equipment. During the time he was thus employed he became so much an object of suspicion to the rebel authorities, that he was obliged to abandon the project of taking his family with him, and that the authorities refused to permit him to sail from the port of Mobile, except upon the express condition that he should sail for Havana, and should there account to agent of the confederate government for one half of the proceeds of his cargo of cotton. This condition was exacted of all vessels sailing out of that port for Havana, and no clearance could be procured without complying with it, which condition, after a long delay, he acquiesed in, only for the purpose of obtaining a clearance for his vessel.

Your petitioner disclosed at the time his plans and intentions to those confidential friends that he could implicitly trust only, as the discovery of them by the authorities would have endangered his life.

That he sailed from Mobile on the 30th day of December, 1863, with the full intention of delivering himself and vessel to the blockading squadron, if he should meet them. and otherwise to convey himself and vessel. if she would hold together so long, to Havanna, or some northern port, and once out of Mobile harbor, he did not put back, although his boat was partially disabled in a storm the first night out.

That on the morning of the 31st of December, the gunboat Kennebeck, came in sight; that he did not attempt to escape, but raised the American flag, it being the only one he had on board his vessel, and one that he had preserved during the whole time of his residence in the Confederate States; that upon being boarded by the officer of the Kennebeck, your petitioner demanded of him protection for himself and property, telling the officer at the time why his vessel was in this predicament, but the officer seized both vessel and cargo as prize of war.

That said vessel and her cargo, consisting of 449 bales of cotton, was first sent to Pensacola and then to New Orleans, where your petitioner was brought a prisoner, and not allowed to communicate in any manner with the shore until the 18th day of March, 1864, when he took and subscribed the President's amnesty oath of December 8, 1863, before the clerk of the United States district court for the eastern district of Louisiana; that he ascertained, upon his release, that proceedings had been instituted in said court for the condemnation of said vessel and her cargo as prize of war, *while he was detained as a prisoner* without notice to him, and that afterwards as a decree of indemnation was entered in said case, and said vessel and cargo were sold by the United States marshal of said eastern district of Louisiana to highest bidder, all of which your petitioner alleges to be unjust, and in direct violation of the spirit and letter of the amnesty oath and proclamation of December 8, 1863.

Your petitioner avers and will satisfy the honorable Secretary of the Treasury that he was a loyal man attempting to escape from the confederacy, which he had never aided with his property, [*and to take the same into the loyal States, by way of Havanna, if his vessel should prove fit for the voyage,**] in order to meet his wife and family whom he had sent out of the confederacy by another channel, and for whom he had arranged to live at the house of his mother, in the State of Maine; that he had no intention to violate the act of Congress regulating commercial intercourse with the insurgent Strtes, of which he was a citizen, or any law of the United States, although the acts which he was doing

* The words in *brackets* appear as an interlineated *amendment* in the original. They were thus introduced into the petition after it was drafted. It also appears that the amendment was made after the petition was filed and submitted to the Attorney General, inasmuch as it is stated specifically in his opinion that the petition before him contained no allegation that the cargo was "proceeding," when captured, from a revolted State to the rest of the United States.

at the time of the seizure aforesaid, apart from the intention and purpose with which they were done, might be a legal and technical violation of said act, so that he may have no defence in a court of law, especially as that district court in which his vessel was tried, ruled and held that the intention and purpose of your petitioner could have no legal effect in the determination of the cause, and his seizure by the Kennebeck, then employed in the inforcing said act of Congress under the proclamation of the President, could in no sense be a capture to render the property maritime prize of war.

Your petitioner, therefore, humbly prays the protection of the United States, and that justice may be done, and that the technical forfeiture be remitted by the order of the honorable Secretary in accordance with the eighth section of said act; and that the proceeds of the sale of his vessel and cargo, now in the custody of said court, may be released to him upon the payment of such legal costs and expenses as may have been incurred by the officers of the United States in the proceedings thereupon. And your petitioner will ever pray.

TIMOTHY MEAHER,
Per S. W. COZZENS,
His Attorney in fact.

BENJ. F. BUTLER, *of Counsel.*

OPINION OF THE ATTORNEY GENERAL.

THE GREY JACKET AND CARGO.

ATTORNEY GENERAL'S OFFICE,
March 15, 1866.

SIR: Your letter of the 29th of January propounds several questions touching the authority of the Secretary of the Treasury to remit, under the eighth section of the act of July 13, 1861, entitled "An act further to provide for the collection of duties on imports, and for other purposes," the forfeiture, which has been judicially decreed, of the property involved in the case of the steamer Grey Jacket.

That cause is at the present time pending, on an appeal taken by the claimants, in the Supreme Court of the United States, and the record presents it as a case of a ship and cargo captured by a naval vessel of the United States on the high seas as prize of war, libelled as such in the district court for the eastern district of Louisiana, and, as lawful prize, condemned by final decree of that court.

The claimant and owner of the property had been for thirty years previous to the capture an inhabitant of one of the revolted States. His allegation is, that although the vessel, with her cargo, was at the time of capture in fact bound on a voyage from the blockaded port of Mobile to Havana, the object of the voyage was to effectuate the removal of his property from the enemy's country, and to sever his relations to the confederacy.

The question whether, in any case of the capture of property *jure belli*, brought within the prize jurisdiction and condemned by a court of the United States in the exercise of that jurisdiction, the Secretary of the Treasury may entertain an application for remission under the statute of 1861, is a question of *great* interest and importance. In regard to this *vessel*, which was liable to forfeiture under the 6th section of the statute of 1861, as well as subject to condemnation for breach of the blockade of Mobile, I have only to say that even if the Secretary of the Treasury may exercise, under the statute, authority to remit the forfeiture of a vessel owned by a resident of one of the insurgent States, and found on the high seas, which has been proceeded against and con-

demned in a prize court on account of ownership, I am of opinion, as at present advised, that he cannot exercise that jurisdiction in the case of such a vessel, thus proceeded against and condemned, which was also confiscable for breach of blockade.

The Grey Jacket sailed from Mobile in violation of the blockade of that port. She was, therefore, confiscable in a prize court. The fact that she was confiscable on account of ownership did not render her any the less liable to condemnation for breach of blockade. I do not discover any tenable ground on which to repose the power of the Secretary of the Treasury, under the statute of 1861, to remit the forfeiture of a vessel which has been incurred under the *jus belli* on account of a violation of the blockade. Even if he could remit the forfeiture superinduced by ownership, he could not mitigate the legal consequences which followed from the conduct of the vessel in respect to the blockade and its laws.

These remarks also embrace the application in respect to the *cargo* of the Grey Jacket, which was equally with the vessel confiscable for violation of the blockade of Mobile. But in respect to that interest a further observation may be made, which, independently of the views just expressed, excludes any idea of the legal application of the statute of 1861 to the present cargo.

I do not perceive any ground whatever on which the jurisdiction of the Secretary of the Treasury to remit, is capable of being legally supported in the case of a cargo not "*coming*" at the time of capture from an insurrectionary State or section "*into the other parts of the United States*," or not "*proceeding to such State or section*" from the rest of the United States. In other words, I am very clearly of opinion that whatever may be the extent of jurisdiction conferred by the 8th section of the act of 1861, upon the Secretary of the Treasury, it does not extend to the case of any cargo, not impressed at the time of capture with such a destination as would render the property, if seized on land, liable to forfeiture under and by virtue of the 5th section of the act.

I have read the petition presented to you in the case of the Grey Jacket. I do not perceive that the case of the *cargo* is brought, by the admissions therein made, within the 5th section of the act of 1861. There is no allegation that the cargo was "proceeding" at the time of capture from an insurrectionary State to the rest of the United States.

As at present advised, therefore, I am of opinion that for this reason, as well as that depending on breach of blockade, in which the cargo and vessel were both involved, the jurisdiction of the Secretary of the Treasury cannot lawfully be exercised in respect to the present cargo.

The last question asked in your letter is, "whether the present is a proper case for an exercise of any authority to remit that you may possess?" If you have in law the power to remit, the question whether it would be justifiable to exert it in any particular case, is one which cannot be determined by strict legal rules or principles. The matter is wholly within your jurisdiction.

I am, sir, very respectfully, your obedient servant,

JAMES SPEED,
Attorney General.

Hon. HUGH MCCULLOCH,
Secretary of the Treasury.

OPINION OF THE ATTORNEY GENERAL.

THE ADELSO AND CARGO.

ATTORNEY GENERAL'S OFFICE,
April 2, 1866.

SIR: Agreeably to your request, I have examined and considered the application and accompanying papers presented to you by Edgar Tucker and Henry Whitin, of New York, and John MacRae and Donald MacRae, of Wilmington, North Carolina, for the dismissal of the proceedings now pending against the cargo of the schooner Adelso, condemned as prize of war by the United States district court for Rhode Island, and for the restoration to them of the proceeds of the sale of that cargo.

The schooner Adelso and cargo were condemned in the Rhode Island district on November 13, 1861, as prize of war; and, on appeal to the circuit court for that district, the sentence was affirmed. The claimants thereupon appealed to the Supreme Court, but failing to appear and prosecute their appeal when the case was reached, on the call of the docket it was dismissed by the court.

The President is now asked to interpose some supposed authority conferred upon him by the Constitution or laws of the United States, and restore to the claimants the proceeds of the condemned property. Has he such power? That is the legal question I am now to answer.

It is manifest, in the first place, that the result desired by the claimants could not be attained by a discontinuance of the proceedings instituted against the property. Those proceedings have ripened, so to speak, into a judgment of the court. They have performed their function. They invoked the action of the judicial power of the government, and that power has acted. The result is a judicial decree. That decree must stand until it is reversed in due course of law by the same authority that gave it birth. The very court that rendered the judgment could not set it aside or open it. It is capable of being affected only by a decree of the appellate court.

Prior to condemnation the President might, perhaps, have directed the local law officer to discontinue the proceedings in prize. Such action on the part of the Executive might have removed the cause from judicial cognizance. But subsequent to condemnation, I know of no executive authority which could be directly exerted upon the judicial proceedings in the case, so as to impair the efficiency of the decree, or affect any one of its legal consequences.

It may be contended, however, that the President has power to remit the forfeiture to the claimants. There is no statute conferring upon the President the general authority to remit forfeitures. If he possesses it, it must be that he has it by virtue of that clause of the Constitution which empowers him "*grant reprieves and pardons for offences against the United States.*"

While it may not be susceptible of a doubt that the President has power to remit or mitigate any forfeiture of property incurred or decreed for any offence against the United States, and which is imposed by law as punishment for such an offence, I do not believe that the grant of power to the President embraces that class of cases in which the law declares property to be forfeited altogether irrespective of, and without reference to, the personal conduct of those who own and control it—cases, in other words, in which the forfeiture accrues solely as the result, and in virtue of the predicament in which the property may be found, the relations it may sustain towards the government, and the character or quality which that predicament and those relations affix to it. The confiscability of property captured and brought to adjudication, *jure belli*, stands precisely upon those grounds. The theory on which all proceedings in prize are founded and conducted is, that the property involved is "*enemy's property.*" The question of liability to confiscation in a prize court, administering and enforcing the law

of nations, is always a question whether the subject of capture is the *property of enemies.* The converse of this proposition is also true, as an eminent prize judge has explained. The inquiry "whether the subject of capture is *enemy's property* is always in a technical form, the question of confiscability in a prize court." (Op. of Cadwalader J. in the Parkhill.) Within this designation falls the property of all residents of hostile places, without discrimination in favor of those who may owe allegiance to the government of the captors, or even in favor of such of these as maintain the most friendly and loyal feeling for that government.

The prize courts, in adjudicating upon property of such ownership, institute no inquisition into the personal deportment or sentiments of the proprietors. In the case of the Venus, (8 Cranch, 280,) the Supreme Court condemned, as "enemies' property," merchandise owned by a citizen of the United States residing in England, and shipped from that country for America before any knowledge of the declaration of war. The cases in which the English prize courts condemned supplies shipped from, and actually owned in, Great Britain, for the purpose of relieving the distresses of British subjects in Grenada who were under the temporary subjection of the French during the period of our Revolutionary war, proceeded upon the ground that the supplies were constructively French, and, therefore, *enemies' property,* (1 Rob., 207.) The property was owned by people in Ireland, who were, no doubt, perfectly loyal to the British crown. If it had been owned by starving and loyal Grenadians the same decree would have been pronounced.

The cases in which property is condemned as constructively hostile on account of trading with enemies, do not proceed upon any ground of personal hostility or blame imputable to its owners. They are considered enemies in the particular transactions "by fiction, or rather by intendment of law." (5 Rob., 176.) If a citizen or subject of a belligerent State undertake to remove from the enemy's territory, property acquired long before hostilities, and it is captured at sea, it will be condemned by the operation of the rule against intercourse with enemies, and as within the designation of hostile property. (8 Cranch, 163.) The owner may have intended no wrong, and his conduct, in a moral sense, may have been entirely blameless.

The owner of a vessel violently contravening the belligerent right of search, in time of war, is *pro hac vice* an enemy, as also the proprietor of a ship that breaks a lawful blockade, (1 Rob., 340; ib., 90.) Both may be friends, and yet their property is deemed, in the particular transactions, impressed with a hostile character.

Without referring to any more examples of the application of the doctrine I have mentioned, it is clear that the judicatures by whom it is administered do not take into consideration, as an element of any legal importance, the character of the persons whose property is prosecuted as hostile, either absolute or relative, as viewed by the municipal law of the country, or the conduct of those persons, according to the code of laws administered by the ordinary tribunals of the government. A man may become a traitor by holding commercial intercourse with enemies. His conduct may at once subject him to criminal prosecution for treason or misdemeanor, and render his property confiscable as prize of war. But such intercourse, even where it stamps a hostile character on property, does not necessarily involve or imply personal guilt or criminal responsibility. In no case of that character does the prize court adjudge or consider the personal liability of the party whose property is before it for judicial action. It takes no cognizance, because it has no jurisdiction of that subject.

Prize courts are tribunals of the law of nations, and the jurisprudence they administer is a part of that law. (Wheaton, part IV, chap. 11.) They deal with cases of *capture,* as distinguishable from *seizures,* which are adjudged by

the courts constituted for the enforcement of municipal law. Their decrees are decrees of *condemnation*, whereas those of other courts in proceedings *in rem* are decrees of *forfeiture*. "Capture" and "condemnation" are words of technical significance in courts of prize, as are "seizure" and "forfeiture" in the formulary of legal expression appropriate in tribunals administering municipal law, and enforcing statutory remedies against property. The prize courts adjudicate the character and relations of the things—whether vessels or cargoes—brought within their jurisdictions. The municipal courts in dealing with cases of forfeiture, mainly judge of the acts of *persons*, and determine whether offences have been committed which superinduce the confiscation of property.

The purpose of naval warfare and maratime capture, is not to enforce penalties with a view to the infliction of punishment upon *offenders*. Their object is to destroy the wealth of hostile places, with a view to the reduction of the power of *enemies*, and the attainment of the ends for which hostilities are prosecuted. Hence, it is, that the courts constituted to adjudicate suits arising from hostile maratime captures, consider in all cases, whether, and to what, the property contributes to the wealth of hostile territory, and condemn or restore according to a code of principles framed for the determination of those questions. The property of friend, as well as foe; of the innocent, as well as the guilty, is swept to condemnation by the application of the rigorous rules of the prize law. If a man happen to own land in an enemy's country, though he be a neutral friend, domiciled in friendly territory, the produce of that land is condemned as hostile. (9 Cranch, 191.) He is considered an enemy, as proprietor of a part of the enemy's soil. He is a part of that country in the particular instance, independent of his personal residence, occupation, or conduct. So if a neutral person have a share in a mercantile house in the enemy's country, the property representing it will be capturable and condemnable as enemy's property; and upon the same principle a merchant of the hostile country, interested in a house of trade in a neutral country, cannot maintain, before a prize court, a claim for his share of captured property, owned by the neutral house. (Wheaton, 573–575.)

Without proceeding further with this line of remark, when the prize court for the Rhode Island district rendered judgement of condemnation against the cargo of the schooner Adelso, it is clear that it simply declared that the property was within the legal designation of enemies' property. The judgment affirmed nothing in respect to the personal conduct or sentiments of the claimants. Those of them who lived in North Carolina were enemies by domicil, (2 Black, 635.) Those of them who resided in Boston, if they owned an interest in the cargo, were enemies *pro hac vice*, with reference to the seizure of this particular property, which was concerned in the trade of enemies. The Supreme Court has recently decided that property of a northern man, taken in hostile trade, before the act of July 13, 1861, went into effect, was confiscable, (The Herald and cargo, December T, 1865, No. 92.) No one of the claimants was guilty of any "offence against the United States," in owning or shipping this cargo. There is, therefore, nothing in the case on which the President's pardon, granted in the terms of the Constitution, could operate.

I am clearly of opinion that the President cannot, by any exercise of the pardoning power, remit or mitigate the forfeiture and condemnation of the present cargo, or entitle the petitioners to demand restitution of the proceeds.

I find, let me say in conclusion, that this precise question was submitted by the President to my learned predecessor Mr. Bates, and that he held, as I do, that the President has no power, by pardon or otherwise, to remit the forfeiture of property regularly condemned in a prize court of the United States. (MS. Opinions, 1863, p. 374.)

Very respectfully, your obedient servant,

JAMES SPEED,
Attorney General.

The PRESIDENT.